

In the Matter Of:

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

DTSC WORKSHOP

May 28, 2014

Reported By: Cathy Meyer CSR No. 11596

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DEPARTMENT OF TOXIC SUBSTANCES CONTROL

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DTSC WORKSHOP AGENDA

Elihu Harris Building Auditorium, Oakland, California

Taken before Catherine M. Meyer

CSR No. 11596

May 28, 2014

1 P R O C E E D I N G S

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4 INTRODUCTION

5 Wednesday, May 28, 2014 - 9:32 a.m.

6
7 MR. SCHUMACHER: Good morning. Welcome all of
8 you. Thank you for coming this morning for our second
9 workshop on the proposed initial priority products list
10 for Department of Toxic Substances Control. I hope
11 everyone has an agenda. If you don't, they're still
12 available out front. Also if you have a name tag on,
13 that will be helpful because we'll be doing breakout
14 sessions in each of the rooms on the second floor in
15 the second side of the agenda.

16 I would like to introduce two people before we
17 get started. We have a court reporter to my left who
18 is recording the proceedings this morning and also
19 we'll have a court reporter in each of the breakout
20 sessions and record the entire proceeding. The reason
21 we want to do this is we want to keep track of
22 everything that is said. We do want to hear what you
23 have to offer for us in terms of information about
24 these three products. This is the whole reason for why
25 we're here, to get information from each of you about

1 these products. We also do want to give you an
2 overview of the process that we're engaged in so you
3 understand how we're doing this and what the steps are
4 so you also understand where you can input our process.
5 Also, if anyone needs interpretations into Spanish, we
6 have an interpreter available right here. So please
7 join her here in the front of the room if you would
8 like her service.

9 Would you raise your hand? Okay. So she's
10 available right here if you would like that. Thank
11 you.

12 What we would like to do first is give you an
13 overview of our process. Karl Palmer, who is one of
14 the branch chiefs involved with the Safer Consumer
15 Products Program, will speak about the process and then
16 we'll have time for questions and answers and also
17 comments in general about the process or about the
18 overall program. Please save any specific comments or
19 questions about specific products for the breakout
20 sessions later on this morning.

21 Any questions on process from anyone? Okay.
22 Hearing nothing, Karl.

23 MR. PALMER: Thank you, Nathan.

24 Can everyone hear me? Okay.

25 So thank you for coming this morning. I'm

1 going to go over a few things, the purpose of why we're
2 here today. I'm going to go over the process that
3 we're embarking on in terms of adopting these potential
4 priority products and regulation. I'm going to go over
5 our framework simply to provide regulations somewhat
6 and give some context so people are sure they
7 understand the process. I'm going to talk about what
8 the next steps are and the timelines that all this
9 plays out in.

10 So what are our goals? For DTSC first and
11 foremost we're here to listen and to understand what
12 your interests, concerns, perspectives are on the
13 priority products we're proposing to adopt in
14 regulation. It's important to us that we understand
15 your perspective, that we get good information. This
16 is a pre-regulatory workshop. It's not a formal
17 hearing. We're here to learn so that we can get that
18 information so that when we go to formal rule making,
19 we're accurate and consistent and clear so that as we
20 enter the formal rulemaking process people know what
21 we're trying to do and you'll have an opportunity to
22 work with that. I'm going to talk about that process a
23 little bit, too. It's also an opportunity for people
24 to share perspectives with each other and an
25 opportunity for us at the DTSC to explain to you our

1 perspective on why we chose these products, how we see
2 this process working, over what time frame, and to
3 answer any questions that you might have.

4 So anyway, that's the gist of it. And it's
5 pretty informal. So I will have an opportunity for
6 questions here in general and then in the breakout
7 sessions there will be plenty of time to answer very
8 specific questions and have some robust dialogue
9 hopefully.

10 So just an overview of the process. Today
11 we're in our -- this is our second workshop. We had a
12 workshop in Sacramento a couple weeks ago. We have
13 another workshop just like today, same agenda, same
14 format June 4th in Los Angeles. We're meeting with a
15 lot of different stakeholders that are interested in
16 what we're doing, collecting comments. You'll have an
17 opportunity to formally comment to us via our web page,
18 send us an e-mail. We'll digest all that. The second
19 box in the middle is the part where we're looking at
20 all this information, doing additional research based
21 on that information, asking you and others questions
22 and refining our perspective on what ultimately our
23 regulatory language can look like. And then we'll move
24 into the formal rule-making process which under
25 California law Administrative Procedures Act is a very

1 formal process by which the public and everyone has an
2 opportunity to formally comment and where we formally
3 respond to everyone's comments.

4 So stepping back a little bit. In the middle
5 of March we announced what the three initial priority
6 products we selected were, and that initiated this
7 public workshop process. As I said earlier, we're
8 going to finish up in Los Angeles next month and then
9 we're going to move into rule making hopefully later
10 this year. So that process will, as I said, be a
11 formal process. And we'll put out not only the
12 regulatory text but supporting documents that -- and
13 the initial statement of reason which explain our
14 thinking on the text, additional CEQA process. We'll
15 do an economic analysis and all the things that are
16 entailed in the document of regulations.

17 One of the important points is to think of the
18 perspective of what does that mean in terms of time.
19 Assuming we go out late this year with the draft
20 regulations, we have to finish our regulations within a
21 year. And typically we take about that whole time. So
22 what we're looking at is finalizing the priority
23 products list in 2015. That's important because at
24 that point is when there's the first regulatory effect
25 of these regulations which is that it starts the

1 alternatives analysis process as laid out in our
2 regulations. So really there's about a year, a year
3 and a half or so before we're actually going to be
4 initiating alternatives analysis or anyone is actually
5 required to do anything.

6 So stepping back a little bit, why are we doing
7 all of this? Well, the California legislature in 2008
8 passed some bills that mandated that the department
9 adopt regulations which would create a framework of a
10 process to evaluate consumer products that contained
11 toxic chemicals that either harm people or the
12 environment and to come up with a way to encourage and
13 require manufacturers who make those products safer.
14 The legislature has a long history of taking action to
15 maybe ban something or restrict something, and it's
16 usually very specific. And this is somewhat different
17 because the regulations we adopted at their behest were
18 framework regulations which are a process in and of
19 themselves. The legislature tends to either ban
20 something or set a standard, and our framework is a
21 little different.

22 Additionally one of the challenges that comes
23 with legislation is that often it results in unforeseen
24 consequences. So you might ban one chemical and one
25 product only for that to be replaced by another

1 chemical in that product which might be as bad or worse
2 than what was banned. So our regulations put in place
3 a process which addresses that as well.

4 And essentially what our regulations do are ask
5 the question is it necessary? Do you need this toxic
6 chemical in this product? Can you find a safer way to
7 make that product? Can you eliminate the use of this
8 chemical? Can you substitute it with a different
9 chemical? Can you redesign your product to make it
10 safer? And rather than dictating what that looks like,
11 we're asking the question to people who make the
12 product. And they have a process that we dictate what
13 the steps are called alternatives analysis which they
14 must go through to see if they can find a safer, better
15 way to make that product. I'm going to go through
16 these steps in some detail.

17 But this is different than many environmental
18 and health organization regulatory schemes where, you
19 know, the department has done this as well where we set
20 a standard. We say you can't -- hazardous waste is
21 something if it's over this concentration amount, very
22 specific. This is much more open ended. With that
23 flexibility comes the ability to be creative and to
24 have lots of options. It also creates some tension
25 with the uncertainty that comes with the end result.

1 So how do regulations work? There's basically
2 four main parts to the regulations. I'm just going to
3 go over the broad framework and then I'm going to dive
4 a little deeper into one of these. First and foremost
5 we identified chemicals that contain certain hazard
6 traits that we're concerned about. They cause cancer.
7 They might be mutagenous, like that. The department
8 then last fall, September 26th of 2013, we identified
9 which chemicals we were talking about. We published
10 our informative candidate chemicals list. Now, in
11 March we were looking -- before March we were looking
12 at what products contain one or more of those chemicals
13 that might we identify as focusing on the first round.
14 We did that in March and identified the three priority
15 products we identified today.

16 As I alluded to earlier, once these products
17 are adopted formally in regulation, sometime in late
18 2015 an alternatives analysis will be required. And
19 that will be not on the department's shoulders but on
20 those people who make those products. And they'll have
21 to go through that process and make some determinations
22 about what they want to do with their product to make
23 it safer. At that point, DTSC will take a look at that
24 alternatives analysis and the recommendation of the
25 manufacturer and we have the ability to implement some

1 regulatory responses as appropriate. I'm going to go
2 through these fairly quickly.

3 So candidate chemical identification. The
4 department essentially adopted chemicals via other
5 lists. We have a list. There's 23 lists that we
6 identify from throughout the world. And they're there
7 for two main reasons. One, because they identify
8 specific chemicals with specific hazard traits. It
9 might cause cancer. It might be a mutagen. It might
10 be a developmental toxin, et cetera. Those are
11 represented by the small what we call the blueberries
12 on this graphic, the hazard trait lists. And there's
13 15 of those. Additionally there's eight what we call
14 exposure potential lists which really are lists that
15 identify that some of these chemicals are actually in
16 people or in the environment. They may be in the air
17 quality list. They might be in the biomonitoring list
18 or water quality list, for example. Those are the
19 grapes on this list. So collectively there are about
20 1100 chemicals or groups of chemicals on that list. I
21 would note that it's not comprehensive. The
22 legislature provides certain exclusions which most
23 predominantly were pesticides and dangerous drugs.

24 So for the first round of priority products
25 selection in our regulations we put a restriction on

1 ourselves to narrow this menu, if you will, of
2 chemicals down to about 150 chemicals. And those were
3 the ones that the chemical had to be on one of both the
4 hazard list and an exposure list. It had to be a grape
5 and a blueberry. And that's limited that list down of
6 1100 to about 153. So we're starting off with a narrow
7 scope.

8 Next, identifying priority products. So what
9 are the provisions in our regulations which dictate how
10 we select priority products? And there's two main
11 issues. One is that there needs to be potential
12 exposure to that chemical in that product and that that
13 exposure can contribute or cause a significant or
14 widespread hazard either to people or to the
15 environment or both. And those, granted, are extremely
16 broad criteria. There are additional factors that are
17 identified. And I've highlighted some of the key ones
18 here. And those relate to both the major chemical list
19 properties as we pinpoint those environmental and
20 toxicological. We also have some waiting, not a lot.
21 But subpopulations are identified in our regulations as
22 being of special concern. And those include things
23 like workers because of the duration of potential
24 exposure, children because of their developmental
25 stages that they're in, women, the elderly, et cetera,

1 as well as environmental pinpoints like sensitive
2 environments or endangered species, things like that.
3 We also consider the market presence of the product.
4 How much of this stuff is out there and who potentially
5 can be exposed. I highlighted the variability of
6 information as a factor because that's one of the
7 reasons we're here today is that the department, in
8 publishing our priority products profiles which are the
9 documents you've seen on our web which outline our
10 thinking and what we're looking at when we made these
11 selections, is limited to basically public information.
12 And so our hope is that part of this process will give
13 us additional dialogue and information that we can use
14 to inform us to refine our perspective and get it
15 right.

16 Another thing I wanted to highlight is that we
17 are considering other regulatory programs. Our
18 regulations dictate that we consider other regulatory
19 programs. And this is a common question. Why is this
20 necessary? OSHA is taking care of this. Or why is
21 this necessary? The waterworks is taking care of this.
22 A couple of things. One, the framework that we're
23 dealing with in our regulations is extremely broad.
24 Most of the other regulatory programs are fairly narrow
25 in their perspective. OSHA is a good example. OSHA

1 does a great job. But their perspective regulatorily
2 and administratively is for workers in -- you know,
3 that are employees. So that doesn't cover homes. That
4 doesn't cover independent contractors, for example.
5 Additionally our framework goes beyond just the one
6 point in time but looks at the use of that product
7 throughout its life cycle. So both in the workplace,
8 in the home, at its end of life, transport and in the
9 impact that the manufacturer and use of that product
10 has above and beyond just a specific use in the
11 manufacture, the extraction of that resource that makes
12 that product, et cetera. So our scope is much bigger
13 than most of the other programs. And we're not trying
14 to duplicate anything.

15 Also we consider the availability and
16 feasibility of alternatives. That's a factor that can
17 be used in our consideration.

18 The bottom line is that there is no
19 prescriptive formula in our regulations which dictate
20 how we select these products. We have great latitude
21 to make decisions based on the reliable information we
22 have out there, the good science, the good information
23 in the market, et cetera, and we have a lot of
24 discretion. That causes discomfort for some folks.
25 But one of the reasons we picked the ones we did, we

1 think they're good candidates based on those factors.
2 We always -- we could have picked three -- five
3 products the first round. We only picked three in part
4 because we wanted to make sure that we are deliberate,
5 slow, accurate, effective. This is a new process for
6 us as well as everyone here, and it's important to us
7 that we get it right. And so we can look up there.
8 There are a myriad of different potential consumer
9 products that could have been selected. And you'll see
10 in the future as we select more those will come into
11 play as well.

12 Product selection, how did we do it? We talked
13 to a lot of people certainly within our sister and
14 brother agencies in the state and federal government in
15 terms of people who regulate these materials and have
16 information. We did a lot of talking with them. When
17 I would go talk to industry groups, I would ask people
18 what do you think we should be looking at. We also did
19 extensive literature search and our staff looked at the
20 information publicly available. Then we looked at
21 those key factors that I mentioned earlier, you know,
22 what about the subpopulations, what about other
23 regulatory bodies, their effectiveness and scope.

24 So as you probably know, these are the three
25 products we chose, children's foam-padded sleep

1 products with flame retardant chlorinated Tris, paint
2 strippers with methylene chloride, spray polyurethane
3 foam systems with unreacted diisocyanates. We're going
4 to go into great detail in at least the breakout
5 sessions. I'm not going to spend too much time going
6 through the rationale for any one of these.

7 I do want to highlight that we are listening.
8 We got a lot of information at the first workshop in
9 Sacramento and a lot of engaged stakeholders and we
10 appreciate that. And we already made some tweaks and
11 clarifications. So one of the things we did do in the
12 case of this spray polyurethane foam systems is clarify
13 that for roofing systems that we're not looking at the
14 roof coating which the net effect of that is that many
15 of those coatings contain TDI and some other chemicals
16 of concern. So that changes the focus a little bit.
17 And we're also highlighting that we're talking about
18 the system when it's applied, when the foam is not
19 cured. There was concerns that we were looking at the
20 built environment that, you know, homes or places that
21 had spray polyurethane foam in them for years or days.
22 We're not focusing on it. We're focusing on the
23 process of creating the foam when there's free
24 diisocyanates. If you look at our web page, you'll see
25 in the regulatory concept discussions a clarification

1 of that. You'll also see that we put on each of the
2 profiles some information which highlights the profiles
3 were a snapshot in time of DTSC's view, that we will be
4 modifying information as we move toward rule making and
5 that the intent of those profiles is not to make a
6 statement about the specific safety or not of that
7 product and its use particularly compared to some other
8 alternatives. We did hear that our documents were
9 being held up by competitors of certain products to say
10 hey, this is -- DTSC is saying this stuff is not safe
11 to use. So we clarified that. And you can see on our
12 web page that would be helpful.

13 A couple other things I want to highlight.
14 Right now we're talking about the first three priority
15 products we're proposing. But we have in our framework
16 regulations a process where we can develop a three-year
17 work plan which is essentially the menu of categories
18 of potential priority products that we will select from
19 on outgoing years. We are going to finalize that first
20 work plan by October 1st of this year. We'll have a
21 workshop this summer, we haven't scheduled it yet,
22 where we will put out our draft work plan and hope that
23 people will participate and give us feedback on that.
24 Note that it's by categories of priority products. And
25 we have like a great latitude there, so there'll be

1 various things to look at. But the purpose of this is
2 twofold. One is to make it clear to people of these
3 potential industries that we're looking at these things
4 as potential priority products. And we want to be
5 engaged with you so that we can get good information
6 and make good choices. And I think the other thing it
7 does is it sends messages to the markets that this is
8 the direction we're heading and that people that work
9 in those markets can make great strides and work with
10 us as well to make their products safer within the
11 regulations itself.

12 So alternatives analysis, what does that mean?
13 Essentially the provisions on how to do alternatives
14 analysis in our regulations are really to answer that
15 question is it necessary? Is there a safer
16 alternative? Are we sure that our proposal is not
17 doing something that will result in regretful
18 substitute or adverse impact that wouldn't be foreseen
19 had we not done this analysis. And that document will
20 then be the basis for the company to say this is what
21 we propose to do with our product. It will also be the
22 basis for DTSC to look at that document and say does it
23 make sense? Is what you're proposing something that's
24 consistent with the requirements and the regulations
25 and does it make your product safer?

1 The legislature, when they passed the law
2 dictating what we do with this, they identified 13
3 specific criteria. And I just -- I highlighted -- I'm
4 not going to read all these. And essentially the main
5 point is the breadth and depth of the look and the
6 alternatives analysis is great. And I want to
7 highlight, A, product function and performance. It is
8 important that the product meet its function and meet
9 the business model of the person making it but at the
10 same time considering all these other factors which are
11 the typical things you might think of, environment
12 impact, human impact, water, air, soil, but
13 additionally things like transportation use, energy
14 inputs and outputs, greenhouse gasses, extraction --
15 resources extraction impacts and economic impact. So
16 it's very broad. This creates a challenge in how you
17 do an alternatives analysis with something that is so
18 broad with so many factors dependent on a lot of
19 information.

20 So how do we do this? This slide is to
21 highlight that there is no prescriptive step-by-step A
22 plus B plus C equals D cookbook for this. Our
23 regulations identify specific criteria and things that
24 have been considered and things that have to be
25 addressed. We're in the process right now of

1 developing guidance on how to get through this process.
2 And we hope that draft will be out by the end of the
3 year. We have fortunately the assistance of our Green
4 River science panel to give us information on good
5 science and perspective and experience on how to assist
6 in developing guidance that would be helpful to people
7 who are the practitioners of alternatives analysis.
8 And this guidance will be a combination of things. It
9 won't just be a big narrative. It's going to be tools.
10 It'll highlight pilots. It'll highlight examples and
11 things like that. And to the extent we can, we will be
12 hopefully assisting with small and medium size
13 businesses that are engaged in this with our staff.
14 Many of the large businesses this will just be an
15 expansion of their existing business model process
16 where they already do some kind of alternatives
17 analysis. So staging for that we will be having
18 probably a series of webinars and maybe workshops as we
19 develop the statute. And it'll be a living document.
20 It won't be static when it'll be done. We'll continue
21 to update it as we go.

22 Regulatory responses. Again, the legislature
23 identified some specific regulatory responses, options
24 that we have after we look at an alternatives analysis.
25 The first one would be that we do nothing, good job,

1 move forward, do good things, make your product safer.
2 That said, there may be times where we need additional
3 information to understand what the analysis suggests is
4 correct or accurate or appropriate. We might ask for
5 information. We might also ask that the entity provide
6 to the public, to the consumer information about the
7 product and its potential safety impacts. Ultimately
8 we can restrict or prohibit the sale of a product if
9 the analysis isn't adequate and we think that there's
10 potential harm there that needs to be litigated. We
11 also consider end-of-life issues. So, for example, if
12 you have a manufactured product which when it's done
13 with its useful life still contains some chemical that
14 is going to be problematic in the environment or
15 people, it might require that -- you know, managing
16 household hazardous waste that we can require that that
17 manufacturer implement some kind of product stewardship
18 program to collect that -- those products or to work
19 with their local government and folks to make sure it's
20 managed appropriately. And additionally, there may be
21 a situation where there's just not enough information
22 to know that there is a better way to do it. We might
23 say, you know, we need more research on this and go do
24 some research and let's see if we can move this
25 forward.

1 So what does the road ahead look like? Again,
2 we're going to be hopefully getting towards rule making
3 this fall. We'll also have this fall our three-year
4 work plan. We're going to be developing our guidance
5 this year, and it'll be an ongoing effort. I also
6 wanted to highlight that we're in the process of a very
7 robust effort internally to get the -- at DTSC to
8 improve our web capability and our ability to manage
9 data. Information will be the coin of the realm in
10 this process. And it's important to us that we make it
11 easy for stakeholders to provide us information, for us
12 to distribute information and importantly to protect
13 information that's appropriately identified as trade
14 secret or confidential business information.

15 And so I'm excited about this effort and I
16 think you'll find it's helpful. We'll also be using
17 rule making so people can submit comments and then
18 we'll have a way for people to search the public domain
19 of comments and things like that. So I wanted to
20 highlight that.

21 So the bottom line is why we're all here and
22 all what we do is we want to protect people. We want
23 to protect the environment. And I appreciate you
24 coming today. Your perspective is important to us, so
25 please state it. Also note that if you don't get said

1 what you need to say today, please use the e-mail
2 address on our website right there and send us written
3 comments. You can send us documents, references, et
4 cetera. Please continue to check our web page. We'd
5 like comments to be, if you have them, to get in by the
6 end of June. That's not a hard and fast requirement.
7 It's just, you know, it will be helpful to us moving
8 towards coming up with the rule-making package for the
9 fall. So that's my request to you. And thank you for
10 coming.

11 MR. SCHUMACHER: Now we would like to take any
12 general comments, any questions about the process that
13 any of you have. And we have a floating mike, so you
14 don't have to worry about having to speak loud.

15 So yes, sir.

16 MR. KOSCHER: Good morning.

17 MR. PALMER: If it doesn't work, if you could
18 just speak loudly and as long as our court reporter can
19 hear.

20 MR. SCHUMACHER: If it doesn't work, please
21 identify yourself for the court reporter as well.

22 MR. KOSCHER: I'll speak loudly.

23 Thanks, Karl. I had a question. At the last
24 workshop you clarified the department's commitment to
25 having only accurate information. I'm sorry, Justin

1 Koscher with the American Chemistry Council. At the
2 last workshop you clarified the department's commitment
3 to having only accurate information on the website, and
4 again this morning you reiterated the department is
5 taking a deliberative process to be able to ensure that
6 there's only accurate information. And while I can
7 appreciate the intent of revising the regulatory
8 concepts in posting the clarifying statement on the
9 product profiles, the fact remains that the product
10 profiles, specifically the spray foam product profile,
11 contains inaccurate information. My understanding of
12 the department's process, that product profile will
13 persist until the rule-making process begins sometime
14 this fall. So it's still -- the industry is still
15 faced with combatting misinformation that's contained
16 in that product profile. So my question is when can
17 the industry and the public expect DTSC to fulfill its
18 commitment on only posting accurate information by
19 revising that product profile? And I would think
20 perhaps an appropriate manage and use would be the
21 strike-through approach that you took to revising the
22 regulatory concept to meet what you've stated as your
23 purposes not having multiple versions of that product
24 profile on there. Thanks.

25 MR. PALMER: Thank you for your comment. We

1 did just today I understand post on each profile a
2 series of descriptors and disclaimers, if you will,
3 what it is and what it isn't. It doesn't contain
4 strike-through amendments. We're trying to avoid
5 continuously amending documents. And I think we tried
6 to highlight that that was a snapshot as of March 13th
7 and that we'll be amending information as we collect
8 the rule-making package. Certainly consider if there's
9 still a lack of clarity on that. We can consider that.
10 But we're trying to avoid continuously updating
11 documents and the many other documents on the web.

12 MR. KOSCHER: My only suggestion would be to
13 refine the products profile now rather than later would
14 help focus comments and input that the department needs
15 as you said to compile the regulatory package. I would
16 hate for you to receive comments on parts of the
17 product profile that you know are inaccurate or that
18 you plan to disregard and the industry and the public
19 misses key points that you do need information on. And
20 I think a revised or a strike-through version of that
21 product profile at some point prior to the public
22 comment period would be helpful.

23 MR. PALMER: Yeah, well, certainly before we go
24 to public comment we will have clarity on what is and
25 isn't and whether we take that down or revise it. I

1 think it will be clear what we're talking about. Thank
2 you.

3 MR. FISHBACK: Follow-up to that? Raymond
4 Fishback, Dow Chemical.

5 MR. SCHUMACHER: Please identify for the court
6 reporter.

7 MR. FISHBACK: Raymond Fishback, Dow Chemical.

8 Karl, I think you said in the last public
9 workshop that you had a commitment to revising that.
10 I'm wondering what changed between that public
11 commitment to do that and the decision not to revise it
12 until the approval-making process.

13 MR. PALMER: Well, we have revised the
14 documents. We haven't done a strike through.

15 MR. FISHBACK: The profiles?

16 MR. PALMER: Of the profiles, yeah.

17 MR. RAYMER: And that's on your website?

18 MR. PALMER: It's on our website. Additionally
19 there's a little informative blurb on the page if you
20 go through each profile. On the first page there's a
21 descriptor that we added about what it is and it isn't.

22 MR. FISHBACK: I've seen that. This is the
23 profile as of March 13th, right, that disclaimer that
24 says --

25 MR. PALMER: There's a four part --

1 MR. ALGAZI: I'm Andre Algazi. I'm with the
2 DTSC. I work with Karl. And on the second page of
3 each profile there's a full-page sort of description of
4 what the profile is and isn't and some disclaimers.
5 Essentially the profile was put out as a beginning of
6 this conversation. So we wanted to clarify that it
7 isn't regulatory. It isn't an endorsement of any
8 alternative product. So in the interest -- I do take
9 the -- Justin's point about strike-outs. I think that
10 the language that we've added to each profile serves
11 the same purpose in that it shows that we're -- that
12 this isn't the last word, that this isn't a regulatory
13 document, that this is what we were thinking at the
14 time when we put it out. But as we get more
15 information, we will include any new information in our
16 regulatory record.

17 MR. FISHBACK: It sounded a little different to
18 the comments that were made at the last workshop in
19 Sacramento. But I think that's your response to how
20 you're addressing that.

21 MR. PALMER: Well, our commitment hasn't
22 changed that we want accuracy and we want people to
23 understand our focus and what we're talking about. It
24 may look a little different than a red line strike-out
25 version right now. But ultimately we are still

1 committed to accuracy.

2 MR. FISHBACK: Thank you.

3 MR. SCHUMACHER: The woman in blue first and
4 then you, sir.

5 MS. ROSS: Lorraine Ross, Intech Consulting
6 representing Dow Chemical. I'm looking at the
7 disclaimer right now. And I see that -- you know, it
8 does go part way at least in talking about how this
9 product profile will be used. However, in the early
10 part of your presentation you talked about two
11 important facts, and that is, the focus is not on
12 installed foam, right; it's on the application process.

13 MR. PALMER: Correct.

14 MS. ROSS: And adding those two items and
15 talking about exposure during application, adding those
16 two limitations to that second page will go a long
17 farther way --

18 MR. PALMER: In the profile itself you're
19 talking about?

20 MS. ROSS: Yeah -- in making people not wave
21 that thing around and say there's a humongous problem
22 here. So that would be one point.

23 And I think the second point is on your
24 regulatory concept amendments in the strike-through,
25 you made it clear that TDI and HDI there are

1 limitations on what diisocyanates were involved. And
2 adding that also to this page makes it more specific to
3 the narrowing, right, on SPF would be useful. Thank
4 you.

5 MR. SCHUMACHER: Yes, sir.

6 MR. MAGNANI: Bruce Magnani with The Houston
7 Group on behalf of Superior Foam Industries. I'd like
8 to echo those comments, and then additionally if you
9 had a disclaimer, I think it would be helpful if you
10 require the person clicking through to go to the
11 disclaimer before they went to the product description
12 so they would understand what they're looking at rather
13 than be able to bypass the disclaimer and only go to
14 the product description. Does that make sense?

15 MR. PALMER: Okay.

16 MR. MAGNANI: Because otherwise you can have it
17 on page 2, but if you don't actually force someone to
18 actually look at it, they're not going to know what the
19 scope is or what the plans are of the description
20 they're actually looking at. I think you should
21 require those people to see the disclaimer before they
22 get to that document.

23 MR. PALMER: So the proposal is you would click
24 a link and then it would take you to a little box?

25 MR. MAGNANI: What you're about to see is "X"

1 or not "X" in this case.

2 MR. PALMER: Thank you.

3 MR. SCHUMACHER: I think you have that. Okay.
4 Yes, sir, in the front.

5 MR. PACHECO: Ernest Pacheco, Communications
6 Workers of America.

7 First of all, we totally support what you're
8 doing. We think this is great. My comments are
9 actually I guess in opposition to what we heard so far.
10 We believe and we would like to see you expand the
11 family of chemicals, related chemicals. Our members
12 make mattresses. Our members make furniture. Our
13 members also use spray polyurethane foam. So two of
14 the three products our people use and work with daily.
15 And we would like to see both the products instead
16 of -- just explicitly like, for instance, children's
17 sleeping mats. Well, it's great you're working on
18 that. Three years down the road we're handling that.
19 Our members are still using toxic fire retardant daily
20 today and the full gamut.

21 Just right now with the fire retardants, we're
22 targeting some of it already today. It's on the way
23 out of being used. And we would like to see the
24 current toxic fire retardants that are in there be
25 included as well. And this is a point I'll make. I'm

1 going to be attending the SPF workshop. I hadn't
2 noticed -- I've been following for a year. For some
3 reason I hadn't noticed that one of your possible
4 regulatory responses was research, further research and
5 that spurs something or triggers something that instead
6 of waiting three years and then possibly figuring out
7 some kind of mechanism to enforce or create some more
8 research.

9 On the issue of SPF there are already two
10 currently available commercial products that don't use
11 the specific diiso. Like I said, we would like to see
12 that expanded, the family of chemicals. But if you
13 talk to the Warner Babcock Institute, they say that
14 they believe, and I trust their word and their
15 intention, that within six to nine months they feel
16 like they can deliver a commercially saleable diiso
17 substitute for SPF. And so I would put it out instead
18 of waiting three years to do that research, maybe we
19 could gently urge industry to call Warner Babcock this
20 afternoon and say look, I hear within six to nine
21 months you can deliver the product that we can then use
22 to -- we could already have a solution in the market
23 long before this regulatory process is even over. So
24 just that, thank you.

25 MR. SCHUMACHER: Thank you. In the back.

1 MR. FINE: Thank you. Mit ch Fine, Armstrong.
2 Just a follow-up on Andre's point that this is not an
3 endorsement of alternatives. But on the fact sheet
4 that has been published on the Safer Consumer Products
5 page, it says use alternatives when possible. So given
6 that this is not an endorsement of alternatives, would
7 you remove that from your website?

8 MR. PALMER: I'll take a look at that next
9 time.

10 MR. FINE: Thank you.

11 MR. SCHUMACHER: Any other comments on the
12 process or general concerns? Yes, sir, in black there.

13 MR. DeLORENZI: My name is Steve DeLorenzi.
14 I'm the owner of SDI Insulation. I've been on the
15 board of directors. About 15 years ago I formed a U.S.
16 foam group with about 25 spray foam applicators
17 throughout the United States, every state, close to
18 every state in their demographics. One of the things
19 that I'm seeing here right now, I'm pretty much privy
20 to what's going on with this whole process, is
21 California taking the lead in best practices of what
22 products are going into let's just say homes on the
23 SPFA side. You have Dow Chemical here. You have the
24 Chemistry Council here. But if you go to Texas or
25 North Carolina, they're not on the same page with you.

1 And so if you're going to be a leader in this, it has
2 to be -- it has to be pretty much well-known. I've
3 already pretty much with my group in the last 15 years,
4 we started 15 years doing exactly what you're talking
5 about right now, what are the best practices for our
6 installers, what products are we using. And, you know,
7 we were already there. Now it's come public and all of
8 these forums are taking place. But is it just
9 California or is it Texas, North Carolina, Detroit,
10 Chicago? You know, I work with a lot of these guys. I
11 interact with them on a daily basis. And I'm in a very
12 challenged state right now with best practices. So is
13 everybody on the same page? I know that my group is.
14 And we know everything about all the chemicals from
15 Bayer, from Dow, from Dimilak (phonetic). Any of these
16 spray foam products that are out there in the United
17 States, we've used them all. We tested them all. And
18 I feel I am one of the leaders in the industry, you
19 know, with all new equipment, trained employees,
20 certified employees. We're talking before the fact or
21 after the fact. Before we install or after we install.
22 Am I getting there? You know, so where are we?

23 MR. PALMER: I'm not sure what the exact
24 question is. But I think on a couple of levels let me
25 just say that certainly in the case of spray

1 polyurethane foam we've heard a lot from collective
2 body industry representatives. I encourage you to talk
3 to your colleagues here. They provided us a lot of
4 good information on this.

5 From the regulatory side, yes, we are different
6 than any other state in the country right now. But
7 we're not inconsistent with some basic principles that
8 are happening in different states and potentially the
9 federal level if toxic reform ever comes through. But
10 with that said, when you look at the alternatives
11 analysis community, if you will, is that we work very
12 closely with those folks. And because different states
13 have different specific requirements, there are some
14 differences, but there's a developing community of
15 practice. And I think it is certainly our hope that
16 the practitioners, the scientists and consultants and
17 businesses that will be using and already are using
18 these tools are ones that we will incorporate and
19 highlight so that there will be a consistent approach
20 to looking at a practical and scientifically
21 supportable process to make decisions. Other than
22 that, you know, it's hard to say where other states go.
23 But the other thing I would highlight is that our
24 regulations provide the opportunity on the alternatives
25 analysis process for collaboration specifically for

1 that reason, to share good information. For example,
2 you can get multiple people together and do an
3 alternatives analysis that they can share and we
4 recognize that there are some limitations potentially
5 in terms of working with your competitors for
6 collaboration. But there's a lot of opportunities for
7 collaboration. So we don't -- we're efficient and that
8 good information is the basis of the decision-making
9 process.

10 MR. SCHUMACHER: Yes, ma'am.

11 MS. ALCANTAR: Good morning. My name is
12 Kathryn Alcantar. I'm with the Center for
13 Environmental Health and I'm also a member of Change
14 California for a Healthy Greener Economy. First off, I
15 wanted to thank DTSC for -- it's been a long road. We
16 know you all worked really hard and we appreciate all
17 of the opportunities you created for public input on
18 this process.

19 I wanted to speak to one issue which is the
20 expansion of the potential chemicals being considered
21 both in flame retardants and the spray foam. You know,
22 this comment comes from a place of, you know, we're
23 looking at over 80,000 chemicals in commerce, millions
24 of product out there. We recognize your intention to
25 be as you said deliberate, slow, accurate and factual

1 in this first round. But there was an opportunity to
2 choose up to five products. And, you know, given as I
3 mentioned the number of chemicals out there, the
4 numbers of products, from our perspective it would be
5 really helpful if you could consider at least the
6 multiple chemicals that are on your candidate list that
7 are currently being used in the product category. So
8 for example, I think you have -- we've checked and
9 there's about nine different flame retardant chemicals
10 that are on your candidate chemical list, some of which
11 we already know are being used in children's foam
12 sleeping products. So we would really want to stress
13 strongly that the department consider looking at that
14 host of flame retardant chemicals that are currently
15 being used, that we know are being used that are posing
16 a risk to children because there is a lengthy time
17 process to actually have this change plate and
18 alternatives as you mentioned. We wouldn't want as you
19 mentioned, you know, to spend the three years to get
20 Tris replaced with another flame retardant chemical.

21 Likewise in the case of spray foam, it's our
22 understanding that some spray foam products, not all of
23 them, could contain flame retardant chemicals. And so
24 we just think that we would encourage the department to
25 look into that. And that if there are flame retardants

1 being used that are also exposing workers, we would
2 appreciate the consideration to expand that category as
3 well. Thank you so much.

4 MR. PALMER: Thank you.

5 MR. SCHUMACHER: Anyone who hasn't spoken
6 before? The lady behind the -- yeah, right there.

7 MS. YI-BALAN: I'm Simona Yi-Balan from the
8 Green Science Policy Institute. And I have two
9 questions. One is how are you going to deal with the
10 proprietary mixtures during alternatives assessment or
11 adding them to your candidate list? And then the
12 second question is when you ask is it necessary, are
13 you referring to specific chemicals, like is, say, Tris
14 necessary or are you talking about the function is the
15 flame retardant necessary in this product?

16 MR. PALMER: So the first question was on,
17 remind me again, proprietary mixtures. So we have
18 provisions in our regulations which dictate the process
19 by which we will protect legitimate trade secrets. And
20 that's fairly prescriptive, and we'll evaluate them as
21 it's given to us, and we'll do that. It doesn't mean
22 that you cannot tell us about them. But it may not be
23 a public -- you know, publicly available to everyone.

24 MS. YI-BALAN: But you can still determine
25 whether they're a suitable alternative? They still

1 have to turn over the full assessment of the priority
2 mixture?

3 MR. PALMER: To us, yes. And then so that's
4 laid out in our regulations. And then the second part
5 of your question again? Can you remind me again? I'm
6 sorry.

7 MS. YI-BALAN: The necessary, does it refer to
8 the chemical in particular? Does it refer to the
9 function? So are you asking, for example, for the Tris
10 products are you asking is DTSC necessary or is the
11 flame retardant necessary?

12 MR. PALMER: We're focusing on the chemical
13 product combination. So it's specifically about that
14 chemical. And the alternatives analysis you're looking
15 at the function. So that comes into play. Obviously
16 you need a functional requirement that you can't use
17 another chemical. That would be a challenge. But
18 there might be an alternative to the chemical. You
19 might use that function in another way. So you do have
20 to consider function. But specifically for the
21 chemical we're looking at its hazardous traits and all
22 its impact. Does that answer the question?

23 MR. ALGAZI: The framework regulations don't
24 ask the responsible entity to evaluate whether the
25 requirements -- so as the first stage of the

1 alternatives analysis, the responsible entity
2 identifies the functional performance and legal
3 requirements of the product. So it's beyond the scope
4 of this framework to ask the question do we need a
5 flame retardancy requirement here? That's beyond the
6 scope of what this regulation does. Is that your
7 question?

8 MS. YI-BALAN: Okay. So you're basically
9 assuming that --

10 MR. ALGAZI: Assuming there's a requirement --

11 MS. YI-BALAN: -- there is a function and how
12 do you meet it? What chemical do you meet it?

13 MR. ALGAZI: How you meet it, whether it's a
14 chemical or some other way.

15 MR. SCHUMACHER: Okay. Next. Yes, ma'am.

16 MS. WIGMORE: My name is Dorothy Wigmore. I'm
17 an occupational hygienist with an organization called
18 Work Safe. We do a lot of work with advocating for
19 workers' health and safety and we're also a member of
20 the Change Coalition. And I've been dealing with stuff
21 around chemistry rates for three years now. And one of
22 the things that keeps on coming up and I think
23 underlies a lot of the questions and the concerns here
24 is that there's a difference between hazard and risk.
25 And it seems to me that the talk of work practices, for

1 example, ignores the hazard and focuses on the risk.
2 And as an occupational hygienist, I am much more
3 interested not in whether people get the right
4 protective equipment but whether they have to work with
5 the stuff in the first place and why because of the
6 hazards that are there. And I'm much more interested
7 in solutions. And that's been my practice for more
8 than 30 years I've been doing this. So I think that I
9 would find it useful right now if you reviewed for
10 people what it is these products are being chosen
11 because of hazards that are in them. There may be work
12 practices. There may be other things that people try
13 to do to reduce people's exposure. But that doesn't
14 deal with the hazard. That does not address primary
15 prevention. That is not public health.

16 MR. ALGAZI: I wanted to -- Karl may want to
17 add something. And that's an excellent point. One of
18 the points in the disclaimer that we've added to the
19 first page of the product profiles is that we're not
20 asserting that it cannot be used safely by means of PPE
21 or some other way of protecting the user of a product
22 from exposure. But it's the inherent hazard trait of
23 the chemical that led us to look at the product
24 chemical combination in the first place and the
25 potential for exposures. So that doesn't mean that

1 there necessarily is exposure, but there is potential
2 and there's potential for that exposure to cause
3 significant adverse impacts either to people or
4 environmental receptors. So that's -- so we are trying
5 to focus on the hazard end and reduce risk by reducing
6 hazards rather than reducing risk by using some
7 personal protection or engineering controls to prevent
8 exposure because that can fail sometimes.

9 MR. PALMER: I mean, fundamentally to reduce
10 the hazards we're not so dependent upon human
11 interaction and activities, following the directions
12 using appropriate PPE. And it's a more efficient way
13 to reduce risk.

14 MR. SCHUMACHER: Okay. Next? Yes, sir.

15 MR. TALBOTT: My name is Gary Talbott. I'm a
16 spray foam contractor in Sacramento. Our area includes
17 Central Valley and Lake Tahoe area. So I'm kind of
18 here to put a face on the industry that's being
19 affected as well and was at the first workshop and
20 learned a lot and it looks like you guys learned a lot,
21 too, which is good. That's what we're here for. But I
22 wanted to just -- again, because we're in a different
23 group and, you know, probably not the same group that
24 was in Sacramento that is here today, but I wanted to
25 touch bases on a couple things and use a little bit of

1 the information that I gained from the last workshop we
2 were in. It was kind of to touch base on those things.
3 And first off I wanted to bring attention, again, we
4 talked about classification, clarification being number
5 one in order for us to provide input or just general
6 information of who, what, where and why. And it just
7 comes out every time I turn a page someplace and try to
8 look for a little bit of help on this. But it started
9 way back when an article that said tougher rules could
10 lead to banned products. Also one gentleman from the
11 California Director of Governmental Affairs For
12 Environmental Working Group said they had to put
13 together a program that was legally defensible. They
14 had to dot every I and cross every T. And that's a
15 good thing. Okay. I go along with that if it is true.
16 But what I found in the process that at the very
17 beginning of this infancy of certainly from the
18 industry I'm involved in there was no input from any of
19 the people, stakeholders that were affected at all.
20 Zero. Nada. And so we had no industry input. We had
21 no marketplace impact studies. Throw that into the mix
22 and I just had a conversation with the California
23 Energy Commission last week and someone very high,
24 principals in that group told me right out that they
25 didn't know anything that was going to happen until the

1 day before it happened. And they also were kind of in
2 awe that they asked the question have you talked to
3 anybody in the industry? No.

4 So again, I go back to that first thing brought
5 up was clarification, identification. And we have --
6 I'm not here to beat you with a stick, but I want to
7 congratulate you that we actually had some changes made
8 for it. But I think I want to bring some good news
9 today. I am now a firm believer in climate change.
10 Okay? Here is my climate. I've had phone calls every
11 other day for the last month about folks that we've
12 done their -- foamed their houses and they're asking us
13 do I need to take it out now? Okay. Here is proof,
14 impact. Now, this is from a national builder that we
15 were set to do about 4.5 to \$6 million worth of work in
16 the next three years. Okay? Just read the last
17 statement. We are the opinion that litigation issues
18 may be around the corner. So guess what? We're not
19 going to use my services. So again, I'm here to put a
20 human face to what's going on here. Not only that,
21 I've got a quarter of a million dollars worth of
22 equipment order cancelled. I've got ten people I'm not
23 going to hire. At least. So anything you do is going
24 to have an impact. But my concern is more at the
25 misinformation that has come out and saturated the

1 market at least right now. I mean, you can have all
2 the best intent in the world. But what has happened
3 already sometimes can't be easily removed with an
4 eraser. So is there a way to pull information together
5 that's not saying that we're -- you know, this industry
6 is 100 percent right and you guys are totally jerks and
7 you don't know what you're talking about? But
8 somewhere there's got to be some common ground where we
9 can put out something to the public to let them be
10 aware of the fact that, gee, they don't have to run and
11 duck and cover or move somewhere else or whatever just
12 to maybe soften the issue and say hey, we're working on
13 it because I don't think there's anybody in the room
14 that wants to harm the environment, but there are
15 things maybe that we do that we aren't aware of.

16 But it just seems that like I'm fighting this
17 all the time, you know. I mean, I talk to the building
18 industry association. I mean, these guys are -- you
19 know, I might as well be -- we've tried so hard to get
20 toward net zero, and spray foam can help that. Okay?
21 And I think working closely together that we can
22 provide for you maybe kind of an off-ramp where we can
23 kind of glance the blow and take care of maybe a few
24 housekeeping issues. But to go right out and just say
25 this is bad and we need to investigate and I'm just --

1 I need help. I don't know where I'm going. I'm sure
2 Steve feels the same way. The CDC is in the process
3 right now of 2016 code changes. Right now.

4 One of the big items that they have found on
5 the last big pot of gold that they can go after in this
6 2020 net zero energy for building was ductworking
7 conditions space. Well, that just clarified
8 ductworking attic space. Okay? And one of the
9 vehicles to reach that is spray foam. So they didn't
10 know about this. And they're on it and they're working
11 together. And, you know, they work for all the
12 California taxpayers as well. And they're going
13 through and they're saying, you know, we're going to
14 come out with this, and then we got kind of a shall I
15 say competing organization that may come up with rules
16 and regulations that just blows this out of the sky.

17 So I go back again to the premise that there
18 has been no communication and there still seems to be
19 evidently none between the Energy Commission and what's
20 going on. Or do -- maybe you don't even think it's
21 important. But from my standpoint as a contractor I
22 think it's extremely important to do that. So I could
23 go on and on and on, but we've got other things to say.

24 But also you've been presented by the nation's
25 leading chemists in the industry the last time around.

1 I mean, I'm sitting in the room with people that are
2 beyond the Ph.D. level and they're talking about
3 chemicals. And I'm not a chemist, but I am concerned
4 with our workers and I am concerned with workplace
5 hazards and how to deal with them. And they can't
6 eliminate them, but we can try to get rid of them. But
7 they presented a very strong case that again, no
8 homework was done, no chemist on your side to kind of
9 in the mix. And again, that's it. I just keep an open
10 forum so we can work on this together because I think
11 we could make an end result good for you and an end
12 result hopefully for us. But in the meantime, I need
13 kind of a parachute a little bit.

14 MR. PALMER: Thank you.

15 MR. SCHUMACHER: Go ahead.

16 MR. PALMER: Thank you for your input. We
17 heard you in Sacramento and today as well. I think
18 we've been working with the industry to try to get
19 better knowledge and improve our communication on what
20 we're focusing on, what we're not focusing on. We may
21 at the end of the day disagree about the substance of
22 some things, but we want to be clear and we're
23 committed to that. I would encourage you to talk to
24 your counterparts in the industry. The industry is
25 working together and we're happy to continue to listen

1 and do what we can to be accurate and clear and not
2 have unintended consequences.

3 And as a side note, we did talk to the Energy
4 Commission, maybe not to the right people that you
5 talked to. But we will continue to work with them as
6 well.

7 MR. SCHUMACHER: Anyone that hasn't spoken?
8 The woman in white over there. That's you now. Thank
9 you.

10 MS. PORTER: I'm Catherine Porter. I'm the
11 policy director for California Healthy Nail Salon
12 Collaborative. I'm also with Change California for a
13 Healthy and Green Economy. And we also, as my
14 colleague said, applaud the process so far by DTSC and
15 this process of encouraging safe alternatives. We
16 actually look forward to instead of constricting
17 categories and limiting products within those
18 categories, we actually think the categories ought to
19 be expanded. So I'm a little concerned hearing the
20 conversation about the limits to the spray foam
21 category.

22 I also want to respond to concerns about
23 industry not being included in the process. And this
24 comes up all of a sudden. The reality is that these
25 chemicals have been in these products for years and

1 years, the health effects have been known for years and
2 years and the industry for years and years could have
3 taken their own initiative to get those chemicals out
4 of the products. So this is not a new reality. This
5 has been a reality and people's health have been
6 affected. So I really encourage DTSC to expand the
7 products within the categories as a matter of
8 efficiency.

9 Scarce resources really I think urge DTSC's
10 expansion. We were also disappointed that there were
11 only three products instead of five. And we think had
12 there been five products, that would also have been a
13 better use of scarce resources by DTSC. And one of the
14 categories could have been cosmetics which women,
15 children or men apply on their bodies every day.
16 Certain chemicals like toluene, diethanolamine and
17 formaldehyde that are reproductive and chemical
18 toxicants and carcinogens should have been -- could
19 have been within the priority chemicals within those
20 products. So we applaud the great job being done and
21 we urge moving forward as swiftly as possible and
22 expansively as possible. Thank you.

23 MR. PALMER: Thank you.

24 MR. SCHUMACHER: Okay. At this point we are
25 going to close the open session and move into the

1 breakout session. So first of all, we'll have three
2 escorts to take people to the various breakout rooms
3 because this building is more complicated than the last
4 one and finding your way yourself may be difficult. So
5 before you go anywhere, the paint stripper group will
6 follow Marcia. That will begin here. And that's the
7 first group to leave. So the paint stripper group to
8 leave now or very soon.

9 (Pause in proceedings.)

10
11 BREAKOUT SESSION

12 SPRAY POLYURETHANE FOAM SYSTEMS
13 CONTAINING UNREACTED DIISOCYANATES

14 ---o0o---

15
16 MR. SCHUMACHER: We do have some topics we want
17 to go over. So we'll start with topic number one which
18 is a discussion of the priority products description.
19 But before we do that, we do want to have an overview
20 of how we selected this product and Dennis will be
21 presenting. That's Dr. Guo. And it should work in
22 this room.

23 DR. GUO: Good morning.

24 MR. PALMER: Thank you for coming. Let me just
25 introduce Dr. Dennis Guo. He's one of our research

1 scientists and he's just the lead for this presentation
2 and was part of a team of toxicologists and scientists
3 and engineers working at DTSC on this process. I want
4 to acknowledge all those folks and their hard work. I
5 also want to acknowledge all of your hard work here
6 today and in Sacramento and in between to help us out.
7 So Dennis is just going to give a brief overview of the
8 priority product that we chose here and our selection
9 process, and then we'll try to go through these three
10 areas that we identified in the agenda. We're open to
11 talk about anything, but we want to make sure that
12 everyone has a chance to express their concern or ask
13 their question and that we get through as much of this
14 as we can because we have till about 12:20 on the
15 agenda. So I think we should have plenty of time. So
16 Dennis.

17 DR. GUO: Thank you. Thank you very much for
18 coming to this breakout session for spray polyurethane
19 foam systems containing unreacted diisocyanates. My
20 name is Dennis Guo. I am a research scientist with
21 DTSC. The objective of this brief presentation is to
22 learn and gather information. Today we're going to --
23 I'm going to describe the priority product. One of the
24 comments we see is that the definitions are not clear
25 enough. And I'm going to describe this with more

1 clarity and why we listed this product. And then there
2 are two other topics we want to learn and we want
3 comment.

4 In the priority product profile, the priority
5 product we defined as spray polyurethane foam spray
6 systems containing unreacted diisocyanates. That means
7 the product must be product for spraying and it must
8 contain unreacted diisocyanates. In addition, the
9 product is limited to product for insulation, roofing
10 and filling of the ceiling. And this product may or
11 may not be under the two GPC codes we listed in the
12 profile. But regardless, if the manufacturer put under
13 these two GPC codes, they're included.

14 The priority product comes in different varied
15 delivery pressure components and sizes. They may be in
16 drums, low pressure systems like cylinders and boxes
17 and then individual cans as well.

18 And to clarify, the original priority product
19 profile never intended to include cured, rigid
20 polyurethane foam because they're not used for
21 spraying. Neither did we intend to use polyurethane
22 products that do not involve spraying. Also other
23 polyurethane products that are not mentioned or
24 included in the profile are not included.

25 We choose this product because the product

1 needs to be sprayed and during spraying throws out
2 vapors, aerosols and the particulates that may -- that
3 contain unreacted diisocyanates. And the diisocyanates
4 included in the profile are considered by the
5 department as chemicals of concern.

6 Exposure to the diisocyanates may harm
7 sensitive people. Those are the basis for listing
8 those. The chemicals of concern is MDI and the -- I'm
9 not going into details about MDI because the MDI is in
10 the literature. It's not -- it's inconsistent, but MDI
11 these two cast members included. And you see some
12 strike-out and then why TDI and HDI is no longer
13 included. In the original priority product profile we
14 define -- we include coatings as part of the spray foam
15 roofing system. And the coatings may contain TDI and
16 HDI. We received a lot of feedback and comments. And
17 then we learned that urethane-based coatings are not --
18 are just one of several options for spray polyurethane
19 foam roofing systems. They're not essential. So it's
20 more appropriate to address TDI and HDI and the roof
21 coatings separately. That's why we are no longer
22 including TDI and HDI.

23 MDI is a known hazard. And studies documented
24 the exposure to MDI through breathing vapors, particles
25 and in contact with mucus membrane, eyes and skin could

1 sensitize people and it can lead to asthma and other
2 health conditions. When sensitive people are
3 sensitized, continued exposure relate to severe asthma
4 attacks even concentrations low. Permanent lung damage
5 may occur and possible death.

6 Another factor that we selected this product
7 chemical combination is that this large quantity
8 product in Congress they are very popular and they're
9 well widely recognized for energy savings.

10 This is a slide I borrowed from Dr. Duncan from
11 the SPFIA seminar. And this product is used everywhere
12 and new applications are found continuously and it's
13 been widely used, this product.

14 When used properly and when used for in
15 manufacturers' recommendations and practices, this
16 product can be beneficial. The problem is some of the
17 uses are not necessary follow recommended practices.
18 Like some of the DIY'rs do not wear mask. So the
19 vapors and aerosols in the product particulates like
20 this individual may be exposed to unreacted
21 diisocyanates.

22 We are particularly concerned about two groups
23 of people, small independent contractors and the DIY'rs
24 because this product may be purchased on-line or mostly
25 low-pressure systems. But still vapors, aerosols and

1 the particulates may contain MDI. The reason we are
2 concerned about those two groups, because not all of
3 them are fully aware of the risks. Some of them may
4 not be aware at all and they may not have sufficient
5 training like the people who get certified by the
6 industry. They may use little or no personal
7 protective equipment. The DIY'rs in particular not
8 necessarily have engineering controls. So during
9 applications they may be exposed to vapors, aerosols
10 and the particles.

11 We released some tentative materials in our
12 profile and also we are aware that there are
13 non-polyurethane foam materials and technologies are
14 emergent. Like one person said during the last session
15 that there are product. But DTSC when we were writing
16 the priority product profile, we needed -- decided that
17 we would compare those alternatives. And also the
18 intent of the priority product profile is not to
19 conduct a thorough tentative analysis.

20 The department had limited marketing
21 information. We knew a few large companies supply
22 chemicals. I think there are five of them. System
23 houses distribute the product or formula the product.
24 We don't know the exact number of California-based
25 system houses and the product types and production. We

1 have very little information. This is an area that we
2 would like to learn. We would like to have your
3 comment. If you have a comment, you can submit a
4 comment today or you can submit your comment in
5 writing. And I believe the deadline is June 30th.
6 Thank you very much for --

7 MR. KOSCHER: Can you go back one slide?

8 DR. GUO: Sure.

9 UNIDENTIFIED SPEAKER: Is this presentation
10 going to be posted?

11 MR. SCHUMACHER: Yeah. We'll post it on the
12 web site so everyone can have access to it.

13 MR. GUO: Thank you very much.

14 MR. SCHUMACHER: We would like to start with
15 our first topic question. If you look on the agenda,
16 it's the discussion of the product priority definition,
17 the definition of this particular product whether it
18 needs to be changed in some way or not. We would like
19 a discussion about that topic first. So if you have
20 anything to say about that, please raise your hand.
21 We'll start in the back.

22 MS. WIGMORE: I'm with Work Safe and an
23 occupational hygienist who has come across
24 diisocyanates off and on in my professional career. In
25 terms of definitions, one of the things that I know

1 about from both the green chemistry work as well as the
2 work at Cal OSHA and one of the reasons why a bill
3 called SB193 is in the works is it's very difficult to
4 actually know what's in what products, who makes them,
5 all that kind of stuff. That information is not
6 publicly available. It is one of the things that makes
7 it very difficult for the Department of Public Health
8 to do its work when it knows about new hazards. It
9 makes it very difficult for you to do your work when
10 you're trying to figure out what isocyanates are used
11 in foam products. So my question is how do you know
12 that MDI isn't the only isocyanate that's of interest
13 given that there are many more isocyanates out there
14 that I forget the number because I don't have the
15 documents in front of me? And I would suggest that
16 what you be asking about is isocyanates, period, that
17 are used. And I'm not quite sure why the roofing is
18 off the list, but that isocyanates ought to be a
19 category. And if that's what -- because they share
20 similar hazard traits. And if it's about the hazard
21 and not about risk, and you talked in your presentation
22 about risk, it's actually people don't know about the
23 hazard never mind where it is. So I would advocate for
24 using sufficient, essentially saying all isocyanates
25 that are in spray foam products. Let's figure out why

1 we -- if there aren't other things to put in there.
2 And that's what the alternative analysis is about.

3 MR. PALMER: Thank you, Dorothy. Well, first,
4 the structure of our regulations requires that we
5 identify specific chemical or chemicals in a specific
6 product. So it's our understanding that a specific
7 chemical that is used in the manufacturer's spray
8 polyurethane foam is MDI. That's why we're focusing on
9 that.

10 In the alternatives analysis if, for example,
11 there was a proposal to use a different isocyanate,
12 that would have to be evaluated in that process and
13 would be subject to our oversight and industry's input
14 in terms of how they would deal with that. So in some
15 sense we capture that as an alternative. If we had
16 information that there was other isocyanates, that's
17 concerned in the product list. And we don't.

18 And on with respect to TDI, when we -- at the
19 time we did the profile, we included in our definition
20 of roofing systems the coatings that go on top of
21 roofing systems. We've learned a lot about that.
22 Those coatings are used primarily as a UV protectant so
23 that the foam doesn't degrade over time. There are a
24 wide variety of options there, not just polymers that
25 are based on on TDI or some other. So that along with

1 the fact that they're not typically purchased as part
2 of this spray foam kit or that process, it's a
3 different product. It's not to say that that might not
4 be of concern at some point, but it would be a
5 different product.

6 MS. WIGMORE: Can I ask a related question
7 then? If I remember correctly, one part of the process
8 is that you folks can ask for information about what's
9 in -- what chemicals are being used in chemical
10 products. I forget what you call it, data something.

11 MR. PALMER: Yeah, we've been calling them.

12 MS. WIGMORE: Have you considered doing that
13 for this product?

14 MR. PALMER: No. We don't have any evidence
15 that we need to do that for the isocyanates. You have
16 identified and others have identified concerns about
17 other chemicals in the product, specifically flame
18 retardants. That's not been our focus. We understand
19 there are -- in fact, the industry provided us with a
20 lot of information about what is in both the A and B
21 side of the components which include flame retardants
22 which includes some surfactants and some other things
23 to make the product work. But that's not the focus of
24 what we put forward.

25 MR. SCHUMACHER: Yes, sir.

1 MR. LORENZ: Yes, Will Lorenz of General
2 Coatings.

3 What specifically are the two lists for spray
4 foam? What's the blueberries and the grapes that make
5 it on the list?

6 MR. PALMER: Do we have connectivity? I don't
7 know if we have web access. The way to find that is if
8 you go to our informative candidate chemicals list, you
9 can type in diisocyanates and search and see what lists
10 it's on specifically that we pulled into our
11 regulation. I don't know off the top of my head which
12 ones. I'm not sure.

13 UNIDENTIFIED SPEAKER: There're listed in the
14 profile.

15 MR. PALMER: Profile, yeah.

16 MR. LORENZ: There's a number of sources listed
17 there. But I was trying to find out what's the
18 definitive list of eight and the twelve or something
19 that you say.

20 MR. PALMER: It specifically references in the
21 profile which lists we point to. And I don't remember
22 what some of the products. For example, methylene
23 chloride I do know has -- I think there's 16 hits.
24 There's different lists.

25 UNIDENTIFIED SPEAKER: 18 different lists.

1 MR. PALMER: 18 different lists. Isocyanates
2 is not as many of them. I'm not sure.

3 MR. LORENZ: But MDI-based isocyanates,
4 correct?

5 MR. PALMER: You would search for MDI. And
6 again, it is complicated because a logical person might
7 assume that a CSA number would be unique. They're not
8 and there's overlap. And it can be difficult when you
9 start getting into the different ways chemicals are
10 named. But if you search under that, I think you will
11 find it.

12 MR. LORENZ: I have another question. It was
13 mentioned earlier on about risk hazard, hazard traits.
14 Can you go through how you look at that? I follow a
15 different formula that says risk is equal to hazard
16 trait times exposure.

17 MR. PALMER: That's the same formula we would
18 use.

19 MR. LORENZ: So many times the discussion is
20 really less concerned -- you seem to be talking about
21 hazard trait, but yet we seem to sometimes mix risk in
22 here where risk is a multiplier as part of that.

23 MR. PALMER: Well, it's important to note that
24 our system does -- risk is a part of our system because
25 the criteria are the hazard trait plus potential

1 adverse harm through exposure to that. So it is a
2 risk. The difference in part is that we're looking at
3 the chemical and asking can you substitute or use
4 something different with a lower hazard trait. So
5 essentially rather than saying, well, you could -- and
6 granted, the SPF industry has made huge efforts to
7 train and equip and educate people that use these
8 products, granted. But it's important that people do
9 that because the information provided us by the
10 industry is that people who use high-pressure foam
11 systems are continually in an environment above the
12 PEL. Okay? So it's necessary. So that's a
13 mitigation.

14 But in your equation if you reduce the risk --
15 excuse me, if you reduce the hazard number, then your
16 risk automatically goes down regardless of what
17 exposure control you have. So that's the fundamental
18 principle is that you could theoretically perhaps
19 eliminate the need for some more extensive, you know,
20 protective measures, best practices, training, et
21 cetera, if you had something that wasn't as inherently
22 risky.

23 MR. LORENZ: And does the regulation require
24 that you meet a threshold requirement for exposure?

25 MR. PALMER: There's no specific threshold

1 requirement in terms of it's not like a PEL or a
2 quantitative limit. The regulations do provide that we
3 could establish what's called an alternatives analysis
4 threshold limit which would be that you could have a
5 certain concentration of a certain chemical that would
6 be acceptable. None of the products we chose have
7 that.

8 MR. LORENZ: No. I meant exactly in choosing
9 the product do you have to reach a threshold
10 requirement of exposure widespread, et cetera, in the
11 definition?

12 MR. PALMER: It's the narrative standard that I
13 outlined in the law which is significant adverse
14 impact. There's not a risk number. It's not like in
15 our cleanup programs where they use as a point of
16 departure number one in a million cancer risks. That's
17 not what we're using. It's a narrative. There's a lot
18 more flexibility. And that is a risk-driven number,
19 you know, but that's not the model here.

20 MR. LORENZ: I see.

21 MR. SCHUMACHER: We did check the lists. And
22 MDI is on three of the lists that we used.

23 Yes, sir.

24 MR. FISHBACK: Randy Fishback, Dow Chemical.
25 Karl, you just talked about permissible exposure limits

1 and threshold levels or whatever. When it comes to
2 spray foams, there's obviously several that you used.
3 You just mentioned high-pressure systems and exposures
4 there and --

5 MR. SCHUMACHER: I'm sorry. Could you speak a
6 little louder?

7 MR. FISHBACK: We make -- among other things,
8 we make a low pressure, one component system. And
9 studies show that there is no exposure to diisocyanates
10 well below the permissible exposure limit. So I guess
11 my question is where is the exposure that results in
12 the potential for significant adverse or widespread
13 exposure? And is there -- I mean, I'm wondering if
14 DTSC meant to bring in all of the different spray foams
15 under one umbrella when, in fact, there's no evidence
16 of exposure. As you know, the low component or the one
17 component low pressure comes out as a bead not an
18 aerosol. So it's sort of a completely different
19 application and different physics to the system.

20 MR. PALMER: Yes, we've gotten a lot of
21 information from the industry on that. We still are
22 looking at that. Again, there's no threshold. There's
23 no bright line there. The fundamental concern is that
24 you have still -- there is some unreacted diisocyanates
25 in there. I know the industry has done studies showing

1 that there's minimal, no exposure. We're going to look
2 at that. But the concern was that you've got
3 biomargin, an end user who is not an educated, trained
4 professional that might be someone like me or who buys
5 a can at Home Depot or your local hardware store.

6 MR. FISHBACK: I get it for free, Karl.

7 MR. PALMER: "Great Stuff" actually is the name
8 of the stuff. So again, we're looking at that
9 information. And the fact that it may not exceed a PEL
10 is not relevant in some sense because --

11 MR. FISHBACK: But where is the widespread and
12 significant adverse?

13 MR. PALMER: Because it's sold in every
14 hardware store in the country. And so potential
15 exposure is not an exposure over the PEL. It's not an
16 exposure if it meets some regulatory standard.

17 MR. FISHBACK: So I guess widespread, I just
18 don't think it's significant.

19 MR. PALMER: We're looking at that.

20 MR. RIESENBERG: While we're looking at this,
21 you still have incorrect information on your website.
22 So you can look at it until the cows come home. But
23 you're damaging and decimating this industry with
24 incorrect information that you're still maintaining on
25 your website. You've done nothing to correct it.

1 MR. PALMER: You know what? We need to respect
2 the process.

3 MR. RIESENBERG: That's funny. Kurt Riesenber
4 with SPFA.

5 MR. PALMER: We will call your name and then --

6 MR. SCHUMACHER: We'll get to you in a second.
7 Yes, sir, next to you.

8 MR. MAGNANI: Bruce Magnani with The Houston
9 Group. You mentioned the question was about the list
10 and you mentioned that it shows it on three lists.

11 MR. SCHUMACHER: That's correct.

12 MR. MAGNANI: Which of the three lists
13 specifically references the exposure component because
14 you're required to be on list four, hazard trait and
15 exposure. So you have three lists. Which one is
16 specific to exposure?

17 MR. SCHUMACHER: We didn't research that in the
18 few minutes that we had to do that. Elaine, do you
19 want to take a quick look? Oh, you know?

20 ELAINE: I think it might be -- it's on the
21 OECON list with an inhalation reference exposure level.

22 MR. SCHUMACHER: That's one.

23 ELAINE: The other two are toxic air
24 contaminant list for California and the European
25 Commission list as a respiratory sense or the size. So

1 category one. That's the three lists and it's in the
2 profile.

3 MR. SCHUMACHER: Does that help you, sir?

4 MR. LORENZ: Indeed.

5 MR. SCHUMACHER: Maybe, maybe not.

6 In the yellow shirt, yes.

7 MR. RAYMER: Bob Raymer with California
8 Building Industry Association. A couple points. In
9 terms of getting the word out to our membership, CBI
10 doesn't manufacture the product. Of course, we're
11 accountable for about 90 percent of the new homes that
12 are built in California each year. We also do a lot of
13 apartments and low-rise commercial buildings. And, you
14 know, we're looking at a diverse side set of product
15 alternatives that we can use. What I'm a little bit
16 concerned was I attended the Sacramento workshop and I
17 got a good clarification at that point which has since
18 been further clarified that you're looking at
19 application for spray foam which is very helpful to
20 hear that you're looking at, of course, worker safety,
21 be it a contractor or a do-it-yourselfer, but that
22 you're not looking at unreacted diisocyanates in terms
23 of an installed product. In essence a home buyer buys
24 the home. You've got that between the studs. You're
25 good to go. So it would be good. And if I understand

1 it correctly, if I go to your website now that
2 clarification has been made and I can then use that to
3 get a word out to my membership because I've been
4 reluctant to do that right now.

5 And let me explain to you why. The day after
6 we had the workshop in Sacramento the energy commission
7 as you heard earlier held a workshop. They hold dozens
8 of these workshops as they develop their regulations.
9 Usually at this point in time they will look at one or
10 two new energy efficiency issues and they will move on
11 to the next one, lighting, plumbing. The one that was
12 the day after the Sacramento workshop that you had
13 focused on advanced wall systems and high performance
14 attic systems. And at the beginning of that I had the
15 occasion to overhear my energy consultant talking to
16 one of his cohorts who had nothing -- they didn't go to
17 the DTSC workshop. They were just there for the CEC
18 program. And they were just casually discussing a
19 250-unit project which had the week earlier pulled its
20 use of spray foam and is now going to batt pink roll-in
21 insulation which is probably a Dow product.

22 MS. ROSS: We only do blue.

23 MR. RAYMER: Okay. Owens-Corning. Sorry.
24 Regardless of who it was, based solely on the notice,
25 your two-page press release where it indicated spray

1 foam and then under that insulation in homes or
2 whatever, it sort of led people to believe that was
3 going to be the focus of this. And so almost
4 immediately there's been sort of a pullback by the
5 industry. I want to try to get some accurate
6 information out to our membership. And I don't want to
7 sort of get it through piecemeal. I would like to have
8 like a good one or two sentences saying you're looking
9 at the application of this from worker safety, be it
10 do-it-yourself or contractor, but you're not looking at
11 installed spray foam insulation in the home. Would
12 that be accurate?

13 MR. PALMER: Yes. And we'd be happy to work
14 with you on that to make sure it's consistent with our
15 information.

16 MR. SCHUMACHER: Back in the white, please.

17 MR. VARVAIS: My name is Dan Varvais with Brand
18 Material Science. To echo what Mr. Raymer just said,
19 your naming spray foam to this list is having
20 implications across the United States. We have
21 builders in Texas now that are questioning using spray
22 foam inside their houses because of the legal liability
23 of the possibility for legal actions because of the
24 statement DTSC made. I'm an energy person background.
25 My passion is energy efficiency. And to be able to

1 last summer go through every Energy Star homes built in
2 Sacramento during a heat wave and find that none of the
3 houses were able to maintain their set point. The
4 hottest place on planet earth is the attic above your
5 house in the summertime. There was one builder from
6 Heritage Homes at the Sacramento meeting. Those houses
7 were all able to maintain their set point. They didn't
8 use as much peak power as the other houses did. They
9 had tremendous impact on the comfort for the people
10 inside their houses. And I know we'll get a chance at
11 some point in time to be able to explain how well this
12 product works in terms of energy efficiency and its
13 reduction of greenhouse gasses and the life cycle cost
14 analysis and the sentiment that has been on the
15 product. But what you have done and what you have said
16 is hurting the business across the United States.

17 MR. PALMER: Thank you, again. And just so
18 it's clear, we understand the negative impacts. But I
19 hope it's clear that we are not making any statements
20 or assertions about the energy use of the -- or the
21 energy benefits of the product. That's easy for me to
22 say in the narrow scope of our authority and
23 regulations. What I would encourage the industry to do
24 is work with us to ensure that our information -- read
25 what's on there today. And if it isn't clear, let us

1 know. If you have publications -- I mean, we met the
2 day after the Sacramento workshop. My staff and myself
3 met for four hours with all the main representatives
4 and got SPF cradle to grave. It's very helpful. We're
5 also hopeful to continue that dialogue. And if they
6 want us to look at something to make sure it's accurate
7 from our regulatory standpoint, then we're happy to
8 help.

9 MR. SCHUMACHER: Does that help you, sir?

10 MR. VARVAIS: Yeah, it helps me understand.

11 From our standpoint it's like we've been charged with a
12 crime and we had to come up with a defense and we
13 don't --

14 MR. PALMER: I understand. And that genie is
15 out of the bottle right, wrong or otherwise. The only
16 thing I can do is make the commitment to try to work
17 with people to move forward.

18 MR. SCHUMACHER: Red shirt in the back.

19 MR. FINE: Mitch Fine from Armstrong. The
20 current priority product profile under the section
21 occupational asthma DTSC lists six cases against SPF.
22 Of the six one is spray paint, one is engineered wood,
23 one is rock glue and three are truck bed liners.
24 There's not a single reference to SPF. According to
25 the California Department of Public Health, the 21-year

1 period 1993 to present, out of the total 974,000 cases
2 of occupational asthma, ten were attributed to MDI. Of
3 these ten, five were associated with moldings, two
4 packaging, one woodwork, one janitorial, one unknown.
5 None were associated with SPF. And for the last eight
6 years there have been no reported cases in California
7 of isocyanate occupational asthma from any source.
8 Question.

9 MR. PALMER: I was hoping.

10 MR. FINE: Given this absence of the reliable
11 information and the recent recognition by DTSC that SPF
12 contains no TBI nor any carcinogenic material, does
13 DTSC continue to propose that SPF is reasonably
14 foreseeable to contribute to or cause significant
15 widespread adverse impact as defined in 69501 Section
16 51(a), and if so, on what legal basis?

17 MR. PALMER: Thank you, Mitch. As of today,
18 yes, I would say we still propose to keep that on the
19 list for the reasons we stated before on the basis of
20 the potential harm, based on the hazard traits of MDI
21 as well documented and its widespread use. Now, I'm
22 not disputing -- I mean, it would be great that you
23 would provide all that specific analysis to us and
24 data, and we'll certainly have our toxicologist look at
25 it. And I'm not an attorney, so I can't speak to

1 particularly the legal basis. But, you know, we'll
2 evaluate all that information. And that's why we're
3 here.

4 MR. FINE: Karl, all I would ask you to do is
5 look at 69501 which is the structure, the regulatory
6 guideline which control this discussion. And there
7 they define the word "potential." So potential just
8 doesn't mean any change. It actually means reasonably
9 foreseeable. So it's defined. So given that you don't
10 have any evidence, any reliable information in the
11 current PPP, that document doesn't allow you to proceed
12 with the proposition that you're proceeding with. So
13 again, I would like the legal basis because if
14 obviously we move forward to a legal challenge, you
15 know, we would like to know what the basis right now is
16 in your mind for proceeding other than that it has the
17 potential to cause widespread harm because according to
18 the definition, at least as I read it, it doesn't.

19 MR. PALMER: Okay. Thank you.

20 MR. SCHUMACHER: Yes, sir. Right there.

21 MR. PACHECO: Well, this seems to have been
22 turned into a free-form comment. I thought we were
23 going to go through the questions one by one. So since
24 we're doing things.

25 DTSC, correct me if I'm wrong, you're not

1 against expanding foaming sprays. You're not against
2 insulation. What you're against is a particular
3 chemical mix that has a known hazardous effect. And
4 what I'm hearing from industry, which, of course, is
5 what you're going to hear, is a strong defense doesn't
6 answer this problem. Get a greener solution, get a
7 greener system. Like I mentioned earlier, Warner
8 Babcock says their commission in six to nine months
9 they feel they can deliver a stable, commercially
10 viable product. Now, not everyone here has enough
11 money to commission that. But you here say a bunch of
12 things. Come together. Commission it. Call them up.
13 Instead of fighting about delisting something that's
14 not been delisted and should not be delisted, why don't
15 we actually come up with a green chemistry alternative.
16 There's a way to do that. I know that at CBW we would
17 love to work with you guys. We have a history with
18 that society. Some of you may know, part of the reason
19 there's certain packaging because we fought decades ago
20 because our members were getting sick by diisocyanates
21 and the industry adapted. The largest supplier for our
22 largest employer, AT&T, refused to adapt. They fought.
23 They went bankrupt. Everyone else who is in this room
24 is making a living because they are a part, one
25 component or another, of those that did act. It's a

1 billion dollar industry. So I know we're not going to
2 stop arguing about every little crossed T and I during
3 this discussion. But I really hope there's a
4 discussion about actually finding the green chemistry
5 alternative. It's there. It's doable. Let's quit
6 arguing.

7 MR. PALMER: Thank you. Yeah, and again, you
8 know, stepping back a little bit, not just some spray
9 foam but part of the intent of this framework is to
10 encourage innovation. And the reality is that all the
11 great minds, chemists, engineers, scientists in the
12 companies that make these products have an opportunity
13 to see if there's a safer way to do it. And John
14 Warner, the, quote, unquote, father of green chemistry,
15 is doing some pretty cool things. So I think the
16 market forces will take its course. This is a very
17 regulatory, bureaucratic process that takes time. And
18 so to whatever extent the market can move faster and
19 better, great.

20 MR. RIESENBERG: I think Nathan is punishing me
21 for talking out of turn before. I can wait. I'll just
22 hold my hand up all day.

23 MR. SCHUMACHER: Go ahead.

24 MR. RIESENBERG: Thank you, Karl. Sorry for
25 busting in before. Kurt Riesenbergs with SPFA. I just

1 wanted to apologize for speaking out of turn before and
2 walking in and disrupting your session.

3 So in terms of the items up on the board here
4 which I know you want to focus on, we'll get back to
5 number one I guess and we talked about this at the last
6 breakout session. We had a lot of comments during the
7 general session on some of these issues. And the issue
8 that I'm stuck on, Karl, is that the definitions and
9 terms are unclear. They are ambiguous and it is
10 ambiguous as to which products are included or excluded
11 in this. We've gone around. There's so much in this
12 product profile that's incorrect. There are multiple
13 products that have been mentioned that aren't in there.
14 There are bad descriptions of our product. There are
15 so many -- and I have a question and a request. I'm
16 going to get right to them.

17 There is so much wrong with the product profile
18 that you've published. And we know and appreciate that
19 you're holding these workshops and you're willing to
20 talk about these things and learn about them and all of
21 that. It gets back to the point that we started this
22 off with a month ago. These conversations should have
23 happened a long time ago. You should have known enough
24 about the product to write the product profile
25 correctly. The research should have been done

1 properly. You've temporarily decimated this industry
2 while you're trying to figure all this out because the
3 genie is out of the bottle and now it seems like there
4 is no recourse. So I made a specific request last time
5 to have the product profile removed from the website
6 until such time that you can have it corrected. Unless
7 you can stand here and say right now are you
8 100 percent -- do you stand 100 percent behind
9 everything that's written in that product profile as it
10 stands on your website right now? That was one
11 question and then I had a request.

12 MR. PALMER: Have you seen it lately?

13 MR. RIESENBERG: I have seen it lately.

14 MR. PALMER: You saw the disclaimer, the
15 information we put on page 2?

16 MR. RIESENBERG: Yes.

17 MR. PALMER: So I do stand behind this profile.
18 As we say, it was a snapshot in time on March 13th.
19 That was our understanding and our analysis. So yeah,
20 maybe there's some errors in there. Yes, there's some
21 lack of clarity and we're committed to fixing that.
22 But, you know, the focus on the profile understand were
23 heard loud and clear on the concerns this morning and
24 earlier. I'm not sure what to tell you, Kurt, other
25 than we want to get it right and we're happy to keep

1 working on that.

2 MR. RIESENBERG: The urgency of that is
3 important because we've established that there are
4 inaccuracies in it. And putting a page 2 in there to
5 say, well, there may or may not be because we did it
6 some time ago doesn't really solve any of the problems
7 that the industry is facing as a result of it. If
8 someone, particularly a deliberative government body,
9 has received credible information there are
10 inaccuracies in something and you cannot continue to
11 publish it to the detriment and decimation of an
12 industry, you have an obligation to take it down until
13 it's right. So I'm making a second formal request
14 today that I did at the last workshop that you take
15 that document down until we can get it right. And
16 we're happy to work with you just like we would have
17 been to work with you six months ago. We're still
18 happy to work with it. But now it's in triage mode.

19 So the second item is a request for an
20 explanation as to the differentiation between all of
21 the ongoing federal work on isocyanates, the national
22 emphasis program that no one at the front of the room
23 knew was active at the last workshop that kicked in
24 June of last year. That demonstrates to me great
25 concern because you say you reached out to your other

1 agency partners and other folks. But this is a federal
2 national emphasize on isocyanates, the topic that we're
3 here to talk about. You couldn't have talked to OSHA
4 because Cal OSHA was supposed to be writing their own
5 national emphasis program. They had six months to do
6 it. They didn't do it.

7 So the federal program is now active as of June
8 of last year in this state focused on isocyanates and
9 worker safety. EPA put out a chemical action plan on
10 isocyanates last year. This is a heavily focused-upon
11 product. We have been working with the federal
12 government to put professional certification programs
13 together to get toxic technical documentation right,
14 everything that we could possibly do to develop a good
15 working relationship with them to get good information
16 out and raise the bar on the industry. We've asked
17 several times, and it's still unclear to me with all of
18 the current focus that's on isocyanates how is this
19 program explicitly any different than those and where
20 is it adding value that's not covered under OSHA or
21 EPA.

22 MR. PALMER: Well, we did talk to OSHA. We did
23 talk to the EPA. They're different that they're -- you
24 know, in my mind they're complimentary. I mean, all
25 the good work that's being done by a lot of different

1 people is still good work. This is a different
2 framework. This is asking a more fundamental question.
3 Is there a better way to do it rather than iso? It's
4 not asking should the PEL be changed. It's not asking
5 is there a better practice. So it's a different
6 framework that we were given by the California
7 legislature. We implement the regulations. That's
8 what we're doing. Now, I'm not sure what else to tell
9 you. I'm not trying to discount what the EPA and
10 others are doing. It's just -- it's all good
11 information. And we're committed to working with
12 everyone to see if it fits together.

13 MR. RIESENBERG: So working with those agencies
14 based upon the research that was provided to you and
15 this new flexible framework that you have that still is
16 frankly a little bit muddy to all the rest of us, I
17 mean, it was spoken of in generalities, we're trying to
18 figure out what the end game of this is.

19 MR. PALMER: Again, I think -- let me step back
20 a little bit. One of the perceptions that many people
21 have, not just with this product, is that DTSC has
22 predetermined an outcome. We have not. We haven't
23 decided that we're going to restrict the sale let alone
24 ban anything. It's not our intent. We don't -- you
25 know, you saw the regulatory responses that we have

1 available to us. That's it. It might -- so the fact
2 that we're asking the question doesn't change any of
3 the facts. Okay? We're asking people to use the facts
4 that you have, that the industry has and research and
5 the best minds to answer that question. So it's very
6 important to understand that we're not saying that this
7 product or that product should be banned. We're not.
8 We're asking a question based on the information we
9 have and the framework we're looking at. And where it
10 goes is up to a lot of different people not just us.

11 MR. RIESENBERG: Unfortunately the ban is
12 effectively voluntary at this point because we're
13 seeing a huge drop --

14 MR. PALMER: We hear your point.

15 MR. RIESENBERG: -- in marketing and
16 investment. The contractors in this state are being
17 significantly damaged while you figure it out.

18 MR. SCHUMACHER: Yes, ma'am, in the back.

19 MS. WIGMORE: So I testified before the ESTM
20 committee about this. OSHA does not deal with the same
21 thing that DTSC is around this program. OSHA is all
22 about controls. And I don't have my testimony handy,
23 but I can certainly quote from the head of OSHA who
24 says that the way we're doing things ain't good enough
25 and that what we really need are alternatives analysis

1 and safer chemicals, that they deal with permissible
2 exposure limits which are politically abrasive, numbers
3 that are supposed to protect workers that studies show
4 for the most part often don't. So OSHA doesn't cover
5 this.

6 This is about prevention. It's not about
7 controls. That's what OSHA deals with. They deal with
8 engineering controls, with PPEs. And if I had my
9 prevention triangle handy, I'd show you. When you
10 depend on limiting the harm in that way, it's a very
11 inefficient way to actually have prevention.
12 Prevention is about getting rid of the hazards. That's
13 what Ernie said. There are possibilities out there.
14 But in doing so, when you talk about this priority
15 product description and the definition, on the one hand
16 you are saying you're going to limit yourself to
17 certain -- to only one isocyanate made and only for the
18 stuff when that's being sprayed. But at the second
19 -- my second point is though you're saying you're doing
20 a life cycle approach.

21 And I would ask you to look at the studies that
22 are now being done and have been done in the past about
23 firefighters and what's happening to them as a result
24 of all the crap that's being put into buildings these
25 days, whether it's flame retardant, fire retardants or

1 other kinds of chemicals that have an effect on them
2 that are raising their cancer levels, that are causing
3 breast cancer in enormous numbers in San Francisco
4 female firefighters. You can't leave out the life
5 cycle approach. If it's supposed to be there, you got
6 to think about what it does after you spray the stuff,
7 whether it's to the people in the houses or the
8 firefighters that might be coming in to deal with the
9 fire or other uses when people come along and try and
10 cut the stuff. The heat from the cutting will generate
11 from particulate probably as well as vapor. People
12 might not understand the difference between those two
13 and won't have the opportunity to view the results.

14 So it seems to me that you're feeling the
15 pressure of many of the industry people in this room.
16 And to be quite frank, it feels to me like you're not
17 standing up for what you're supposed to do which is
18 protecting the public, protecting workers, protecting
19 the environment and trying to get rid of toxic
20 chemicals that harm people and harm our environment.

21 MR. PALMER: Well, thank you, Dorothy. I would
22 just say that, you know, the scope of our regulations
23 is quite broad. But in practice the requirements are
24 that we focus fairly specifically on a chemical or
25 chemicals in a product and without making any judgment

1 about flame retardants in general or in foam or any
2 other. You know, we're in this for the long haul.
3 This is -- we're starting very specifically because we
4 think that it's important that we have something
5 concrete and very specific that meets our criteria and
6 that we have the bandwidth to work with this process in
7 an effective manner. And so I'm sure there are some
8 people who would like us to bite off a bigger bite of
9 more chemicals or more products and there's some that
10 would prefer that we didn't bite at all. And so we're
11 starting relatively slow and we'll go from there. But
12 as far as life cycle goes is that -- you know, that's
13 true, yes, the process does look at all the life cycle.
14 But it isn't completely comprehensive. We're limited
15 to certain types of chemicals, certain number. We can
16 only focus on so much.

17 MS. WIGMORE: The last thing I'd like to say on
18 this is that I'm glad to hear that industry is
19 providing you with information. But I think that
20 there's also information from people like those who
21 Ernie represents who use this stuff, the folks that we
22 work with who are day laborers who use this stuff. And
23 I think that you need to hear from workers and what
24 happens to them and what their concerns are just as
25 much as you have from industry.

1 MR. PALMER: Well, what I would say is we would
2 love to hear from everyone. You know, Director Raphael
3 has done things -- people can criticize her for some
4 things. She listens to everyone, and we're going to
5 continue that process of listening to everyone and
6 trying to evaluate information that we get. So we'd
7 love to hear from worker organizations, environmental
8 groups, other industry groups. You know, come one come
9 all.

10 MR. SCHUMACHER: With that in mind, yes, sir,
11 second row back.

12 MR. KOSCHER: Justin Koscher with the American
13 Chemistry Council. I assume maybe you want to move to
14 topic --

15 MR. SCHUMACHER: I would love to move to topic
16 number two, yes.

17 MR. KOSCHER: On that question -- if others
18 have questions on the previous one, I can wait. But my
19 question, Karl, I assume you're going to receive
20 suggestions from some groups under topic two. Can you
21 articulate the process that the department is going to
22 go through in analyzing those suggestions? Are you
23 going to request industry input on whether or not these
24 other chemicals are used in the products and what
25 information industry has on those suggested chemicals

1 if the department does select to move forward with
2 other chemicals?

3 MR. PALMER: Sure. All the questions we get
4 we're going to analyze. And some we may pursue and
5 others we may not. We have a lot of discretion. But
6 certainly if we get a question, for example, what's in
7 the product, yeah, we'll ask the industry. The
8 industry has already given us a bunch of information we
9 didn't have on additional parts, the components of A
10 and B side. Yeah, so we'll certainly ask. And the
11 same thing, you know, part of this is a check and
12 balance process. We don't just believe everyone that
13 comes and tells us something. We would like to see
14 good science backed up by research. We'd like to see
15 facts. And obviously oftentimes there are people who
16 have different opinions. So we try to weigh that. But
17 yeah, we're certainly going to research questions that
18 get asked of us or comments that get made with
19 suggestions.

20 MR. SCHUMACHER: Yes, sir, go ahead.

21 MR. LORENZ: Will Lorenz of General Coatings.
22 On this second topic, the question of -- you presented
23 the hierarchy I think at the -- some of the comments
24 with regard to you have elimination or substitution and
25 then you have reduction. Can you identify or speak a

1 little bit about what reduction means as far as hazard
2 trait? I mean, reduction I can see exposure. But what
3 context do you have because if we modify the chemical,
4 for instance, and we reduce its ability to be airborne,
5 pre-polymers, other things like that, reducing free
6 monomer, things like this which are what you cited in
7 the literature as primarily being more of interest,
8 does that fall under what --

9 MR. PALMER: Yes. That's a great example. I
10 mean, the process is a lot about tradeoffs, right? You
11 know, you have certain functional requirements to make
12 foam. If you found an alternative to isocyanates that
13 worked that maybe had a different physical chemical
14 property that reduced the -- you know, had lower vapor
15 pressure, had lower likelihood of, you know,
16 inhalation, that would be probably better. It might
17 have a different tradeoff because perhaps it had a
18 different toxicity characteristic or perhaps it has
19 some other factor in the use of the foam that reduces
20 its ability, its art value, for example. Okay? Those
21 are all on the table. And so this process is to go and
22 see what's relevant in all of those factors because the
23 menu is very broad in terms of the things that need to
24 be considered, including the function of the product.
25 So it's really about getting that evaluation, seeing

1 what's relevant, weighing the tradeoffs between maybe
2 reducing toxicity on one hand, but there's a tradeoff
3 in some of the factors. We want to obviously avoid
4 regarding the substitutes which on the net would be a
5 loser, right, to people or the environment and the
6 product still has to work. So we don't know the answer
7 to that question. And I think we actually acknowledged
8 in the profile that this is a tough one. You know,
9 it's different than methylene chloride and paint
10 strippers which there are some alternatives. Certainly
11 you could argue the efficacy of those versus methylene
12 chloride. This is more challenging. Those are exactly
13 the kind of tradeoffs that the alternative analysis
14 would be looking at.

15 MR. SCHUMACHER: Yes, ma'am.

16 MS. ROSS: Lorraine Ross, Intech Consulting
17 representing Dow Chemical. I have a follow-up to the
18 question. At the outset -- and I may be dragging this
19 back, so I apologize, to definition. But at the outset
20 you said that what was not included were non-spray
21 polyurethane products, the non-spray products, and then
22 cured, rigid polyurethane foam. And have you
23 identified what cured means? And I'm leading to that
24 because of the question on the alternative approach,
25 right? So if you're looking at time to cure, right,

1 spray and then time to cure, if we could reduce the
2 time to cure, would that be considered a suitable
3 alternative?

4 MR. PALMER: Well, that would be for you to
5 decide in terms of tradeoffs between the curing time
6 versus the function. We are avoiding the definition of
7 what's cured because we've heard from the industry
8 that, you know, it's from zero to two hours to what,
9 depending on where you are. That's not our focus
10 because the primary focus is during the application.
11 And we recognize that there are concerns about, you
12 know, when is it, quote, unquote, safe to rehabilitate
13 or whatever. That's not our focus.

14 MS. ROSS: So without setting a bench line, you
15 know, a benchmark --

16 MR. PALMER: That would be for you to establish
17 when you do your alternatives analysis. I mean, again,
18 it's part of the function of the product and would be
19 part of the potential impact, positive and negative, of
20 the product. And that might be different for
21 different --

22 MS. ROSS: It will be.

23 MR. PALMER: -- manufacturers and process.
24 That's another thing just to highlight is people might
25 come up with different solutions. Different companies

1 might have a different approach. And that's perfectly
2 acceptable. There's nothing -- we're not looking for a
3 silver bullet. We're not going to bless and impose
4 something. It's based on the individual manufacturer.

5 MS. ROSS: Understood. Thank you.

6 MR. SCHUMACHER: I'm going to do what I did in
7 Sacramento. There's a lot of people toward the back of
8 the room who have not said anything. Feel free to
9 chime in. I'm giving you a golden opportunity.
10 Besides Mitch and Dorothy, there's a lot of you back
11 there.

12 MR. PALMER: Somewhere between Mitch and
13 Dorothy.

14 MR. SCHUMACHER: Anyway, I'll go back to our
15 good friend from Great Coatings.

16 MR. LORENZ: Will Lorenz, General Coatings.
17 Trying to understand alternatives. And does
18 alternatives have a definition in your regulation with
19 regard to widespread and viable as you do with regard
20 to being an exposure out there? You have a definition
21 of widespread and so forth. Because if -- you know, my
22 concern is someone is -- you know, someone has reported
23 about a company that's in San Francisco that's
24 proposing to come up with a solution in nine months.
25 You know, they'll have a commercially viable product.

1 Well, good luck with their general -- with their
2 process there. The question is does that product then
3 have to be commercially, one, viable and widespreadly
4 available, or do you accept alternatives if someone
5 were to have just a patent on that requirement which
6 would permit someone like myself or other manufacturers
7 from being in that business? That wouldn't be
8 considered to be viable and widespread. It would be
9 you would be supporting one monopoly.

10 MR. PALMER: I think there's at least a couple
11 questions in there. One I would ask Lynn Goldman, my
12 attorney, about the definition of alternative. I don't
13 recall off the top of my head how we defined it.

14 MS. GOLDMAN: I don't know that we are
15 specifically defining the alternatives in there.
16 That's why the process is that you identify what your
17 product needs to do, the different requirements that
18 you have, and then what could possibly meet that, some
19 theoretical products that haven't been developed that's
20 nine months off that you don't know anything about
21 that, so you couldn't do an analysis on that.

22 MR. PALMER: Yeah, again, it's about tradeoffs.
23 So, for example, one classic example is BPA in plastic
24 baby bottles is a glass baby bottle alternative. Sure,
25 on one hand it's an alternative. It does the same

1 function. Is that an alternative for you in your
2 business makes plastic baby bottles? Maybe not
3 because, you know, can you retool your factory? So
4 there's not a canned answer to that.

5 MR. LORENZ: Love to dialogue further about
6 that.

7 MR. PALMER: Sure.

8 MR. SCHUMACHER: Yes, third row back.

9 MR. PACHECO: I guess I have a question to both
10 DTSC and others in the room. So Soudal which is
11 International Chemical Corporation. I don't know if
12 anyone from Soudal is here. They're not volunteering
13 if they are. Was it Sweden or Switzerland that banned
14 diiso years ago? Soudal come up with an alternative
15 formula. It's been on the marketplace in Europe for
16 years. Soudal has an American distributor and actually
17 manufacturing facility. But because it's not banned
18 here, they don't make it here, so those that want to
19 buy American as CWA does, we can't advocate for AT&T to
20 purchase it. But have you had any interaction with
21 Soudal about whether or not their SPF foam or from the
22 EU about whether or not some of the concerns you're
23 hearing here is Soudal's product working there? Also
24 there's a Corning product. I don't remember the name.
25 We haven't tried it out that also works. Have you had

1 any correspondence from industry where they already
2 have successful models?

3 MR. PALMER: I'm not aware, but I'm going to
4 turn it over to Dennis who knows more about it than I
5 do.

6 MR. GUO: We now made an announcement on-line.
7 And we are not -- we never get an MSDS data sheet and
8 we don't know what the product is.

9 MR. PACHECO: From Soudal?

10 MR. GUO: Yes, yes, Soudal. And also you
11 mentioned his name in our profile. But two weeks ago
12 somebody who regularly they asked the same question.
13 So we did not look into the product, but we are aware
14 of product emerging. But like our W director,
15 Dr. Williams, said, we don't know what's in it yet.

16 MR. PACHECO: I'm sorry. Did they refuse to
17 give you an MSDS?

18 MR. GUO: We have not established.

19 MR. PALMER: And that's an important point.
20 Just because someone says they have a better mouse
21 trap, we're not necessarily going to believe them and
22 there's going to need to be disclosure to us as an
23 alternative if people want to assert that it's safer.

24 MR. SCHUMACHER: Okay. Since we had some
25 people join us in the back of the room, I still throw

1 open the invitation to the back of the room, feel free
2 to chime in. Hearing no one. Yes, sir.

3 MR. KOSCHER: Justin Koscher with the American
4 Chemistry Council. Karl, now that you've received a
5 little bit more information about the value chain of
6 the spray foam industry, do you have a better idea of
7 who would be the responsible entity required to perform
8 the alternatives analysis?

9 MR. PALMER: I think so. I mean, it's -- the
10 channels are sort of complex. But the responsible
11 entity would be the person who actually manufactures
12 the product first and foremost. So in the case of --

13 MR. LORENZ: Which product?

14 MR. PALMER: The spray foam system, the
15 unreacted diisocyanate system and markets that. So
16 that wouldn't necessarily be Dow Chemical. I'm not
17 sure. I don't recall who makes what. But just making,
18 one, the isocyanates, if you manufactured isocyanates,
19 that's not you.

20 MR. KOSCHER: So we're talking more of the
21 systems houses.

22 MR. PALMER: Sounds like it would be the
23 systems houses. Now, those system houses which may
24 be -- there's no light. No one home. So system houses
25 would be what -- I think our perspective would be the

1 people that manufacture who would be the responsible
2 entity. If one of the system houses was outside of
3 California and they didn't want to do the work, then
4 the person that imported that product would be next in
5 line. Ultimately if they don't want to do it, then we
6 could go to the retailer and say, you know, you have
7 some options. You could just act on their behalf or
8 you could discontinue its sale, such a thing.

9 MR. RIESENBERG: Retailer being a contractor
10 also if it's a professional system?

11 MR. PALMER: My understanding is the
12 retailer -- the contractor is purchasing that from
13 someone, right? Kurt, maybe you'd be better to answer
14 this question. Where do you get your materials from?
15 Where do you get your --

16 MR. RIESENBERG: It's a very simple process
17 where raw materials come from a series of
18 manufacturers, another set of raw materials come -- the
19 A side comes from a series of manufacturers, the B side
20 comes from another series of manufacturers. Typically
21 those systems houses that manufactures the B side are
22 purchasing their A side from another manufacturer and
23 they sell them as a set to a contractor or professional
24 contractor --

25 MR. PALMER: And that's who we're talking

1 about.

2 MR. RIESENBERG: -- who then installs the foam
3 on site.

4 MR. PACHECO: It would not be the contractor.
5 It would be the system house.

6 MR. RIESENBERG: Or the distributor, right, in
7 California?

8 MR. PALMER: Well, again, that distributor,
9 depending on the channel that he might have purchased
10 the kit from someone else. So it'd still be the system
11 house.

12 MR. RIESENBERG: Okay.

13 MR. PALMER: Is that helpful, Justin?

14 MR. KOSCHER: Yes, it is. Thank you.

15 MR. LORENZ: Will Lorenz, General Chemical.
16 I'm just trying to follow the rules. I don't want to
17 be like Kurt. Just kidding.

18 MR. RIESENBERG: I got called on it, Will.

19 MR. LORENZ: On alternatives again, are
20 alternatives listed as known hazards? Is there a
21 hierarchy to hazard associations? You've got that list
22 of -- that you put up there, right? And you said that
23 they sort of all weigh the same, including economic and
24 so forth. But is there a hierarchy to a prioritization
25 of how you're going to go about evaluating a water

1 toxicity versus an airborne toxicity, asthma versus
2 cancer, you know, all these other alternatives? If we
3 look at trying to make viable either process or
4 chemical substitutions or look at completely new
5 technologies, we have to then understand that pathway.
6 Otherwise, we're going to be relegating ourselves back
7 to this discussion because we may not have fully
8 evaluated it.

9 MR. PALMER: So I think what you're talking
10 about is in the alternatives assessment process.
11 There's different points in the process whether we are
12 picking the criteria used to protect the priority
13 product is a little different than what you're
14 assessing in the alternatives analysis which is
15 extremely broad. There is sort of a natural hierarchy,
16 if you will, because the AA process is a two-phase
17 process. And the first phase is more of a screening,
18 looking at hazard traits, identifying relevant factors,
19 your business needs and coming up with a work plan. So
20 there's some natural prioritization there.

21 The second part of the process is more in depth
22 dealing with quantitative analysis and making sure you
23 consider all the factors. And I'm not sure what that
24 looks like. I'm trying to think in terms of spray
25 foam. But you have to consider all of the factors that

1 are identified in the A through M criteria as we've
2 defined them in the regulation. Those A through M
3 criteria -- and this is a subtlety. Now we're starting
4 to get reading the regulations -- is that those
5 criteria identified by the legislature, we incorporated
6 those in our regulations. We sort of repackaged them
7 to make a little more sense. You have to consider them
8 all. It doesn't necessarily mean that you have to do
9 the full-blown analysis if it's not relevant. So in
10 spray foam perhaps one factor -- and nothing leads to
11 me -- is not relevant for your product in this life
12 cycle. So you don't consider that and you identify
13 that in your analysis. So I encourage you to look at
14 the regulations and see how that's laid out. And I'm
15 not sure where you're coming from. But --

16 MR. LORENZ: Well, you've talked in terms over
17 many meetings we've had, and we're appreciative of
18 these meetings, is the STD concept of like in my mind
19 the worst -- kind of the worst of products or worst of
20 worst chemicals. So assuming if you have that sort of
21 understanding of that that you have some sort of a
22 hierarchy of that and you got some sort of a pyramid of
23 this causes immediate death, global destruction. So
24 that's the worst case substitution versus something
25 less or more benign. Is there some sort of criteria?

1 MR. PALMER: There is no formula. There's no
2 ranking in some sense. I think we had a really good
3 discussion at our previous green science meeting that
4 you were at talking about your sort of conceptual model
5 of your product and through its life cycle. I think
6 that's where you would start to say what's really
7 important and what are the factors where there are
8 potential impacts and potential opportunities for where
9 there's going to be tradeoffs.

10 Again, back to the chemistry you highlighted in
11 your earlier question, I think there's probably some
12 fundamental questions there which are the performance
13 in the chemistry to make foam. Before you get to
14 end-of-life issues, you're going to start --

15 MR. LORENZ: But again, I don't want to
16 substitute methylene chloride or fire retardants
17 because I know how contentious this is right now. But
18 in the end I want to try and look at not only my
19 products in the future but you also wanted to
20 understand the compounds in there and how they fit in
21 your equation because you're asking me to get to the
22 end point and present to you with a document because
23 I'm a manufacturer of foam systems in California, so
24 I'm the person putting together a document. I pretty
25 much accept that that's the understanding here. But

1 yet I have to then get to either product or chemistry
2 alternatives. And I want to make sure that I don't
3 present an alternative that doesn't meet your criteria
4 or puts me at risk of saying, well, look, you've now
5 engaged a different hazard that we're not willing to
6 accept because we've got a hierarchy here and that
7 doesn't meet the criteria.

8 MR. PALMER: So part of the process that helps
9 ensure that you're on the right track is that first
10 phase of the AA which we approve, okay, and a work
11 plan. So that's going to be where you would come to us
12 and say I've looked at all these factors. These are
13 what I think are relevant. Here's the things I think
14 are on the table, which of these are off. Here is my
15 approach. Here is what I'm going to do. And we would
16 look and that makes sense. So it's not -- you're not
17 waiting all the way to the end of the process which is
18 16, 18 months later potentially to say, oh, you went
19 down the wrong path. Fortunately there's not
20 necessarily -- there's a lot of unknowns. There's a
21 lot of data. You're going to have to do work to figure
22 out how you assess -- get information and assess and
23 balance that. This is part of the challenge we're
24 going to be dealing with in how we do an alternatives
25 analysis. And it's not insignificant. There are a lot

1 of factors and a lot of conditions. There are highly
2 dependent on the specific product. And perhaps your
3 business, certainly your business in the Central Valley
4 and potential impact on surface and groundwater is
5 different than someone who is doing the same thing in
6 the Mississippi River delta. And that might be
7 relevant.

8 MR. LORENZ: Thank you.

9 MR. SCHUMACHER: Somebody new. Yes.

10 MS. BALKISSOON: This may be kind of too in the
11 weeds. As the person who is doing the alternative
12 assessments, we had discussions with Karl about the MP
13 and all those about sort of the A through M criteria.
14 And there was a discussion I thought these workshops
15 were going to focus more on kind of a little more
16 weeding in terms of like with the economic analysis and
17 how to approach that because that was some of the
18 issues that came up. So I was wondering where in the
19 process would that kind of discussion happen?

20 MR. PALMER: Well, there's two parts to that
21 question I think. One is there will be -- as we go
22 through rule making, we're required to weed, go through
23 the finance process especially as to 399 issues which
24 is the fiscal and economic impact. That's a relatively
25 high level analysis of the regulations themselves. And

1 so that's very different than documents that's going to
2 be needed in the AA process. That would be done as we
3 start rolling out modules and guidance on the AA
4 process. And that's what we really would like people
5 to participate. Those are going to be some of the more
6 challenging aspects. How do you monetize this impact?
7 What model are you going to use versus another one?
8 But yeah, that's a little bit further down the road.

9 (The reporter speaks.)

10 MS. BALKISSOON: Indira Balkissoon with
11 TechLaw.

12 MR. SCHUMACHER: And by the way, we do have a
13 court reporter. You have a sign-in for everybody in
14 the room. So we'll get you copies of this.

15 Yes, in the back.

16 MS. WIGMORE: Just on the topic, too. If I
17 heard you right when there was a question about the
18 MSDS from Soudal, the response was that -- from Dennis
19 was that you had sort of posted things on your website
20 and you assumed that was going to bring in people to
21 provide you with information. I managed to find a
22 number of places where both people who are academics
23 are working with companies, John Warner, the Warner
24 Babcock Institute which does this kind of alternative
25 assessment but develops alternatives. There's simply a

1 woman in Southern California who specifically works
2 around alternatives. Are you telling me you sort of
3 don't have that information?

4 MR. PALMER: Yeah. I would love to have that
5 information.

6 MS. WIGMORE: So why is it so easy for me to
7 find and so difficult for everyone else in this room to
8 find? I'm quite serious about that because I have a
9 binder full of writing things around this that include
10 some data sheets about things that are supposed to be,
11 you know, better than the isocyanates in terms of
12 toxicity. I've got information from SUBSPORT which I
13 know you folks know about. So I'm just curious. I'm
14 happy to supply you with it. But I'm a little
15 concerned that you haven't got it already. And whether
16 there's difficulties in the process that you need some
17 help with that aren't being made aware of.

18 MR. PALMER: I think certainly it is a
19 challenging process for us. It's a new process for us.
20 And the three things we're looking at now, we looked at
21 a myriad of things maybe at a shallower level. But so
22 we're learning, too. So if there's approaches and
23 resources that we're not aware of, we would love to
24 hear that. I don't have a better answer than saying
25 that we're doing our best with what we've got which is

1 limited.

2 MR. SCHUMACHER: Maybe before you send us a
3 bunch of material you might want to talk with Dennis or
4 Karl about what we already have just to compare notes
5 either by e-mail or even in person after this session
6 is over with if that's okay.

7 MR. PALMER: That's fine.

8 MR. SCHUMACHER: Okay. Yes, sir.

9 MR. KIRSCHNER: I'm Mike Kirschner with
10 Environ. About market information, this is a huge
11 challenge for any regulator. With the Ross directive,
12 which is the hazardous substance directive in Europe, I
13 talked to a number of enforcement authorities there.
14 For years after this directive came into force, not
15 just when it was issued in 2003 when it came into force
16 in 2006 and for years thereafter and even today there
17 are manufacturers that are unaware of it. There's not
18 a clear path for government and industry to share this
19 type of information for the regulated to know that
20 they're being regulated and for the regulators to know
21 who they should be regulating. So one of my chief
22 concerns about the whole SCP process is how do you
23 address that issue. If you issue a data column, how do
24 you know that you've even gotten to the right
25 organization, to the right manufacturers and so on.

1 What we're hearing here is this took everybody by
2 surprise and all the manufacturers certainly by
3 surprise. And that's probably not the way we want to
4 run forward, right? So what are you thinking for how
5 to improve the communication path between industry and
6 DTSC?

7 MR. PALMER: Well, in the near term our work
8 plan process is going to be an important aspect of that
9 and I think will really help us. You know, personal
10 care products, wide and deep. You know, there's all
11 kinds of potential products there. But the markets are
12 complex and there's a lot of variety. And our ability
13 to get information on that is relatively limited. We
14 purchased marketing information. That is only so
15 valuable. But when we have the workshops and we start
16 saying, well, we're looking at this category,
17 considering this category, it's our hope that the
18 members of that industry will come to us just as all
19 you have and say, hey, let's have this discussion.
20 This is what we do. This is what we know. This is
21 what we don't know, and we'll go from there. That will
22 be helpful.

23 MR. KIRSCHNER: I think publishing a three-year
24 work plan will help get the word out. As I said, with
25 Ross, even years afterwards the UK enforcement

1 authority, for instance, was still looking for help to
2 access small and medium businesses even in the UK to
3 get that information out to them. So there's -- I
4 don't think there's a panacea. But I think you have to
5 really seriously think about all the different avenues
6 to what avenues are available and creating new avenues
7 to get out to industry.

8 MR. PALMER: Well, we certainly need help in
9 that. This is new for us moving into the product
10 world. We're largely a waste and hazardous materials
11 agency. So it's a different perspective. And the
12 tools we have need to be beefed up and we need help
13 refining them and using them wisely. So we appreciate
14 it.

15 MR. SCHUMACHER: Yes, sir.

16 MR. PACHECO: You're getting questions and
17 you're going to get a lot of questions about how are
18 you going to grade the alternatives analysis or the
19 alternatives. And so I'm sure you can only do like a
20 general to do this. But those alternatives that most
21 closely adhere to 12 principles of chemistry, very
22 clearly articulated 12 principles of chemicals, those
23 I'm assuming DTSC will grade higher or find more
24 acceptable --

25 MR. PALMER: There's language in our

1 regulations about how we evaluate the alternatives
2 analysis, products that we get, they include timeliness
3 and making sure you check all the boxes. But there's
4 also language, and I don't remember if any remember it,
5 but looking for the -- there is somewhat of an ST in
6 there that we're looking for the best answer of given
7 the knowledge out there and its viability. I'm not
8 sure how it's couched. But I don't think we identified
9 specifically the 12 fundamental chemistry concepts.
10 But hopefully those will be embedded into the AA when
11 people do it.

12 MR. SCHUMACHER: Mitch, in the back.

13 MR. FINE: Thank you.

14 I'd like to say one thing to CWA and to Dorothy
15 is that with the green science initiative we really
16 have an opportunity in California to do something
17 unique and different. And what I really want to say
18 here is that we're not the enemy. We're looking for
19 this information. We want to cooperate. We want to
20 have dialogue. We don't want to be in opposition. I
21 don't see myself as in opposition to the environmental
22 movement. I got into spray foam because I want to do
23 something good for the environment and work with NGOs
24 to make this product safer. We're absolutely in favor
25 of that. So I don't want you to feel that we want to

1 set up an antagonistic situation here. And I think the
2 framework that Karl is talking about and the state has
3 come up with, the government has come up with is
4 something we can all work together in California and
5 really set a model for the rest of the country. And I
6 want to participate in that and I don't want to be seen
7 as, you know, the bad guy. So I think that's really
8 important. And we're all in this room here. And I
9 think as you said on the screen, we all have the same
10 goal here. We want to make homes energy efficient. We
11 want to make the governor's goal of 2020 and we want to
12 do it as safe as possible and we want the information.
13 We'd like the information. And for something viable I
14 can tell you for one I'm there. I'm not going to -- if
15 there's something that's safer that works, I'm going to
16 do it. But again, in my research and everything, I
17 can't find it. But if Dorothy, if you have
18 information, I want to sit down with you and I want to
19 take the information and I'll take that back to B.A.,
20 Armstrong and Dow and say hey, what can we do with
21 this? So I want to cooperate in that way.

22 The specific question I have is is SPF with
23 unreacted isocyanates one product or for purposes of
24 hazard and AA analysis does the DTSC look at four
25 distinct products as defined by the EPA and laid out on

1 the PP? Specifically for my question is will you look
2 at SPF roofing which is sprayed on the outside
3 differently for AA and hazard analysis than let's say
4 SPF insulation on the inside?

5 MR. PALMER: Yeah, I think, Mitch, each
6 particular application is going to inform the AA. So
7 because you're part of, AA is looking at the specs and
8 the products uses and needs. So although I would say
9 it's the same product in terms of spray polyurethane
10 foam, its application is a little different both on
11 roofs and in interior space. So the AA would be
12 perhaps if you are the manufacturer for a roofing
13 system and that product was not used for insulation
14 other than roofs, then you wouldn't consider some of
15 those other relevant factors. But that's the long way
16 of saying it depends is it relevant as to what it's
17 being used for.

18 MR. FINE: Thank you.

19 MR. PALMER: In the AA process.

20 MR. SCHUMACHER: Yes, sir.

21 MR. KOSCHER: Justin Koscher with the American
22 Chemistry Council. Karl, I note Dr. Guo covered some
23 of the misinformation on the market information. Can
24 you just articulate what specifically you feel the
25 department doesn't have in terms of the market

1 information that it needs?

2 UNIDENTIFIED SPEAKER: We can't hear behind
3 you.

4 MR. KOSCHER: Oh, I'm sorry. I just asked if
5 Karl could articulate what market information the
6 department needs but does not yet have from the
7 industry or from others.

8 MR. PALMER: I don't know that we've fully
9 evaluated all the information that's been given to us.
10 We've been given a lot of information by the industry.
11 But in terms of market information, who are all the
12 players, who are the 20-plus spray foam houses that's
13 relevant, what are the volume of the product for use in
14 California. You know, this is a good example that you
15 can go and find data on isocyanates, you know, HPV-type
16 stuff nationwide. More specifics we typically don't
17 have.

18 MR. SCHUMACHER: Specific to California?

19 MR. PALMER: Specific to California, yeah. And
20 I think the other aspect would be some of the
21 differentiation between the systems used. So how much
22 is used for roofing. How much is used for other
23 insulation purposes. In the case of the one component
24 foam, how much of that is used -- sold in California.
25 That would be helpful. And that may be in some of that

1 information -- I'm not sure if we -- the number of
2 system houses. So who are the players. So part of the
3 process assuming this goes through is that once the
4 regulations are adopted, the responsible entities are
5 required to notify us that they exist and they're now
6 in this process. We want to be able to do some checks
7 and balances to make sure that everyone who is subject
8 to the regulations is complying. But probably more
9 importantly is to give us some sense of the amount of
10 the chemical in commerce which speaks to potential use
11 and exposure. At the same time it also, not to jump
12 ahead to the alternatives analysis phase, but there's
13 increasing use of this product for very good reasons.
14 And so information on that would be helpful as well in
15 terms of projected use. And some of that I know that
16 industry has given us. I think part of the problem --
17 you know, we spent the last couple weeks digesting a
18 lot of information. And we will certainly have
19 questions that we'll ask people who provided that
20 information if we have it, if we have them.

21 MR. SCHUMACHER: Yes, Dorothy.

22 MS. WIGMORE: One of the questions that might
23 be useful to ask when you're collecting, Karl, is that
24 it seems to me that the market information here is all
25 about the kind of businesses and who is doing. You got

1 nothing about who the end users are, about the workers
2 that are involved, the kinds of jobs those workers do,
3 are they union or not because if they're union, there
4 may be a way to work with some folks collectively.

5 It's much more difficult to work with people who aren't
6 in unions. But there may be some information you want
7 to get about who is actually using this stuff. And
8 it's a game. As somebody who does occupational health
9 here and over the years, it's stuff that's very
10 difficult to get. But if you have an opportunity, you
11 might be exploring that. And I can think of some other
12 questions that might relate to the work concerning that
13 might be useful. I'll pass those on.

14 MR. PALMER: Sure.

15 MR. RIESENBERG: Kurt Riesenbergs with SPFA. I
16 appreciate everything Dorothy said. And Dorothy
17 actually said something a little while ago that the
18 court reporter is here that I can go on record saying I
19 agree with something that Dorothy said. But in this
20 case on the worker issues where you were talking
21 earlier about the OSHA doing things differently, the
22 OSHA national emphasis program drills down to companies
23 with one single employee for the national emphasis
24 program in iso science. It's not ten above like every
25 other net that's ever been. So I feel like you were

1 discounting the work and the direction that OSHA was
2 going earlier with the national emphasis program
3 focusing on worker safety and proper use of this
4 product and this material and now we're back on
5 workers. So I guess I'm asking if you could clarify
6 for me what -- I guess what it is you're suggesting by
7 telling DTSC to go out to the worker end if that's
8 already being covered by OSHA?

9 MS. WIGMORE: Well, DTSC has said that they're
10 interested in certain kinds of uses of the spray foam.
11 And particularly they looked at the small and medium
12 size contractors. So were workers involved there?
13 Workers are involved. And Ernie can tell you how many
14 of his members are involved in using spray foam
15 products. They are not there working for AT&T and I
16 don't know who else. And they're in a union in that
17 case. So workers are important in this because they're
18 the ones who get sick. They're the ones that I talked
19 to a friend today who is on this issue in Massachusetts
20 where somebody ended up in a coma with chemical
21 meningitis as a result of chemical.

22 MR. RIESENBERG: From spray foam? Was that
23 from spray foam?

24 MS. WIGMORE: I believe so.

25 MR. RIESENBERG: Really?

1 MR. FINE: I'd love to see data.

2 MR. RIESENBERG: Yeah, I would, too. That's a
3 hell of a statement to make in a spray foam workshop.

4 MS. WIGMORE: My point is that the workers are
5 ones that get sick. The workers are the ones who are
6 canaries in the shaft. And they're working with
7 isocyanates. There's plenty of evidence about what
8 isocyanates does to people who use them and make them.
9 So that's why I'm suggesting that if you're going to
10 get market information that includes how many workers
11 are involved, how many people -- if you can get this,
12 do it yourselves. But sometimes those boundaries are
13 pretty gray when you're getting into small contractors
14 and stuff. And I know that from my work. But it's
15 because I'm interested in dealing with the hazard. And
16 that's not what OSHA deals with. They deal with the
17 controls. I'm interested with dealing with prevention
18 and hazard. And OSHA deals with controls and reducing
19 exposure. That is what the special emphasis program is
20 about.

21 MR. PALMER: Back to Justin's original question
22 to give you some perspective is that if part of the
23 concern is potential exposure, knowing the number of
24 workers in California that handle spray foam processes
25 would be helpful. And knowing any breakdown of who

1 they are, what they are, what training, how many of
2 your SPFA members are in California and how many have
3 gone through the various levels of training that you've
4 outlined for us. Those are helpful to paint the
5 picture to us about potential exposures, the relevance
6 of or significance of potential harm.

7 MR. SCHUMACHER: Okay. We have to move to wrap
8 up because we have five minutes left for this workshop
9 today. But I want to reassure all of you that you can
10 still send comments to the web address that we gave you
11 earlier as well as contact us through other means as
12 well. So I don't know if you have that. Can you put
13 that thing up?

14 MR. PALMER: The web address?

15 MR. SCHUMACHER: About comments. The very last
16 thing. Yeah, there you go. That's still an option for
17 you. And we'll be in touch with people who send us
18 information undoubtedly, already information we've
19 gotten from you. So Karl, do you want to wrap it up?

20 MR. PALMER: Yeah. So first I want to thank
21 our court reporter and our outstanding public
22 participation staff who have helped us put these
23 workshops on. I appreciate it. I want to thank all of
24 you for coming and for having an honest and open
25 discussion about these issues. We know they're very

1 important to all of you across the board. They're
2 important to us. And it's important that we hear what
3 you have to say. We've learned some things today I
4 think. We've reinforced some other concerns that have
5 been expressed before. We're committed to working with
6 all of you from here on out to get this right. This is
7 a long process. We have our final workshop June 4th in
8 Los Angeles and then we'll have a little bit of
9 breathing room to come back and reassess everything and
10 move forward. In that time I would encourage you to
11 think about what you've heard today, questions that you
12 might have in addition to ones today, comments, you can
13 give us information that you think will be helpful for
14 us to understand your perspective to put in the context
15 of what you think we need to hear. And we're committed
16 to listening and doing our best to evaluate that. We
17 will certainly ask questions if we have them. We
18 appreciate everyone's perspective. You're welcome to
19 come to Los Angeles if you'd like. The format will be
20 the same. And I'm sure we'll be talking to many of you
21 ongoing. So thank you for your time and energy and
22 appreciate it.

23 MR. SCHUMACHER: Thank you all.

24 (Whereupon, the meeting was adjourned at 12:28
25 p.m.)

REPORTER'S CERTIFICATE

I, CATHERINE M. MEYER, a Shorthand Reporter,
State of California, do hereby certify:

That said proceeding were taken before me at
said time and place, and were taken down in shorthand
by me, a Certified Shorthand Reporter of the State of
California, and were thereafter transcribed into
typewriting, and that the foregoing transcript
constitutes a full, true and correct report of said
proceedings that took place;

IN WITNESS WHEREOF, I have hereunder subscribed my hand
this 17th day of June 2014.

Cathy Meyer

CATHERINE M. MEYER, CSR NO. 11596
State of California

DEPARTMENT OF TOXIC SUBSTANCES CONTROL
DTSC Workshop on 05/28/2014

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